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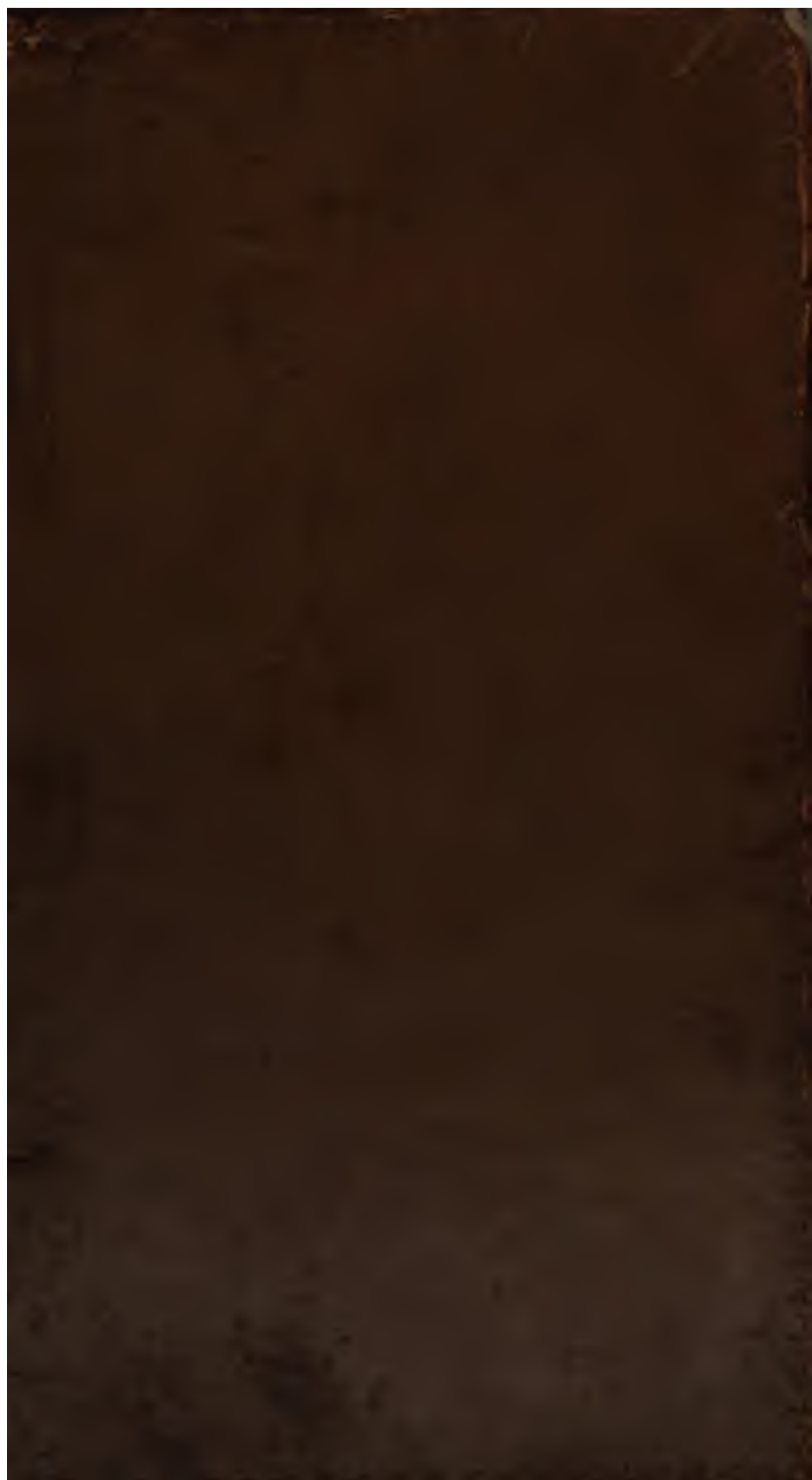
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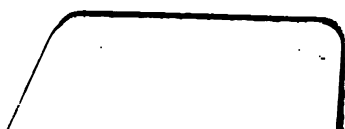
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Legal History
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A
HISTORY
OF THE
COURT OF CHANCERY.

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J. H. 1828.

HISTORY
OF THE
COURT OF CHANCERY;
WITH
PRACTICAL REMARKS
ON THE RECENT COMMISSION, REPORT, AND EVIDENCE,
AND
ON THE MEANS OF IMPROVING THE ADMINISTRATION OF JUSTICE
IN THE ENGLISH COURTS OF EQUITY.

BY
JOSEPH PARKES,
SOLICITOR, BIRMINGHAM.



Nalli vendemus, nulli negabimus, aut differemus justitiam vel rectum.

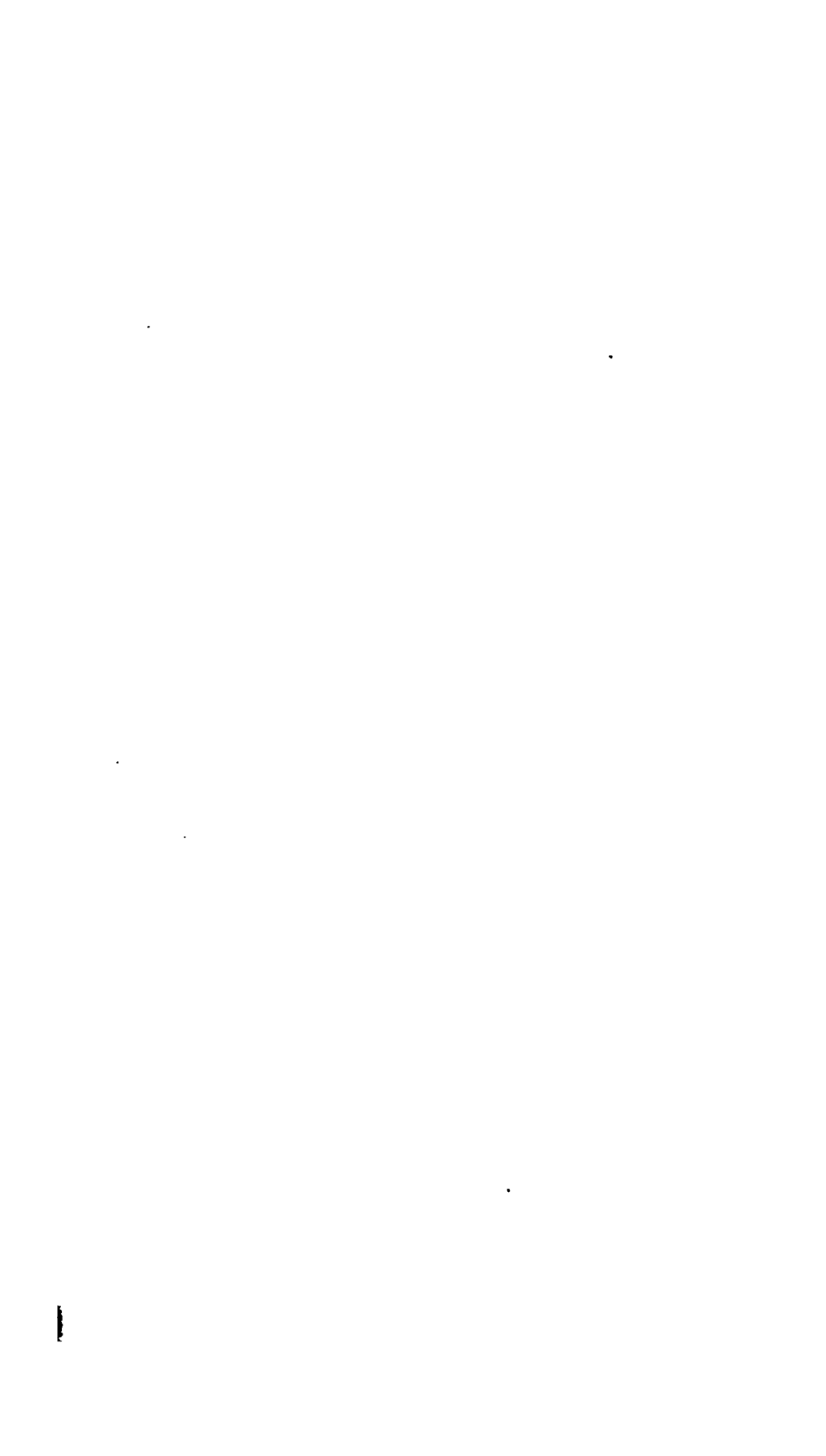
We will neither sell, deny, nor delay Justice.

Magna Carta, cap. xlix.

LONDON:
LONGMAN, REES, ORME, BROWN, AND GREEN.
1828.

PRINTED BY J. BELCHER AND SON, BIRMINGHAM.

“ We may here observe one of the most remarkable of the expedients of the Lawyers. What they have laboured from an early date to create and establish in the minds of their countrymen is—a belief, that it is criminal ever to express blame of them or their system. This endeavour has hardly been less diligent than it has been successful. The belief has grown into one of the most rooted principles in the minds of the more opulent classes of Englishmen. That it is one of the most pernicious prejudices is indisputable. For it is obvious, that it confers upon the Lawyers, as far as it goes, a complete and absolute license to make the system of which they are the organs, and upon which all the happiness of society depends, as favourable to their own interests, at the expence of those of the community, as ever they please. It is, therefore, a belief artificially created by the Lawyers, for the protection of their own abuses; and will never be allowed to retain a place in the mind of any enlightened and disinterested man. The grand remedy for the *defects* of government is, to let in upon them publicity and censure. The grand remedy for the misconduct of the *members* of government is, to let in upon it publicity and censure. There are no abuses, in the exposure of which society is more interested than in those of the Law. There is no misconduct, in the exposure of which it is more interested than that of the *Lawyers*.”—*Mill's History of British India*, vol. 5, b. vi. c. 2.



PREFACE.

THE national importance of the subject of this volume needs no demonstration. The English Court of Chancery at the present moment possesses “ effects of the Suitors ” amounting to FORTY MILLIONS sterling, at the same time that it holds in abeyance the right to other personal and real estates of much greater and unknown value. The evils and abuses of the jurisdiction are enumerated amongst the greatest grievances of the People.

In the last Parliament the Court of Chancery became an object of frequent discussion and enquiry. Numerous publications issued from the press ; but not one of them, in the author’s humble opinion, *pathologically* examined the nature of the complaints, probed their source, or by minute dissection discovered the remedies necessary for their complete removal. No member of the Chancery bar, in or out of Parliament,

had then come forward to expose the *causes* of the evils; no one propounded any practical cure. Those members of the House of Commons, of the common law courts, who chiefly impeached the Chancery, were not technically acquainted with its practice; and in the debate of 1824, Mr. John Williams, (to whom, with Mr. Michael Angelo Taylor and Mr. Brougham, the public is under great obligations for their devotion to the subject of Chancery Reform,) publicly asserted in Parliament that no Attorneys would aid in the exposure of the grievances of the Jurisdiction. Jupiter was said to reign among the gods, *Quia Jovem tangere periculosum*, because it was dangerous to meddle with him. The author of these pages, as a member of the profession, felt degraded by the reflection, and not fearing the “*DI IMMORTALES*,” he began that investigation which now appears in the following history.

In commencing his labour he was sensibly impressed by the force of some observations of Lord Kames in the preface to the *Historical Law Tracts*:—“I have often amused myself with “a fanciful resemblance of Law to the river Nile.

“ When we enter upon the municipal law of any
“ country, in its present state, we resemble a
“ traveller, who crossing the Delta, loses his
“ way among the numberless branches of the
“ Egyptian river. But when we begin at the
“ source, and follow the current of the law, it
“ is in that course not less easy than agreeable ;
“ and all its relations and dependancies are
“ traced with no greater difficulty, than are the
“ many streams into which that magnificent
“ river is divided before it is lost in the sea.”

Under the direction of this guide the writer of the following pages began to explore the hidden sources of English Law, and the origin of the Equity jurisdiction ; but when he early discovered that MR. HARGRAVE and MR. MADDOCK had contemplated a History of the Court of Chancery, and that with all the advantages resulting from their learning and industry they had not been able to accomplish it, he confesses he paused and suspended for a time his journey into the labyrinth of legal antiquity ; in the course of last year, however, he resumed the work, determined to grapple with all its difficulties.

It would be affectation to conceal the application and reflection which this volume has demanded and occasioned. No previous history afforded assistance. All the references and authorities quoted, with scarcely any exception, were examined and collated with the original works cited; and numerous were the wearisome but necessary researches whence no information was derived. The perusal of the Statutes at large and the voluminous Journals of Parliament, (of which the volumes of the Lords have no index, and those of the Commons but a very insufficient one,) will give the reader some idea of the time and labour bestowed on the work. The chapter on the Commonwealth it is hoped may prove a useful contribution towards a faithful history of those eventful and misrepresented times. A further task resulted from the necessity of condensing the mass of information which had accumulated in the investigation of so long a period of history, and which in detail would have extended to three times the length of the present work. In these observations the author is so far from intending to laud himself, that in various ways he claims the indulgence of the reader.

He has been almost exclusively confined to the collections of his own library, an occasional reference to the stores of the British Museum and Lincoln's Inn excepted. He had the disadvantage, moreover, of absence from all the public libraries of the metropolis, and from personal communication with many eminent professional friends who could have afforded him valuable assistance. The volume too has been composed amidst the distraction and fatigue of professional engagements, and in the "midnight hour of travail." The style, particularly in the early part, claims indulgence, the whole volume, with its necessary references and quotations, being rather a work of research than of taste. The numerous notes and extracts might have been adopted and paraphrased, but their literal and ungarbled citation was preferred. Every one conversant with historical researches must have deeply felt the want of *Ithuriel's spear* to enable him to distinguish truth in the falsifications of history; and much of the new and important matter of these pages, if conveyed in the mere assertion of the author, might neither have received, nor appeared entitled to the credence of the reader.

The tabular view of the officers of the Court of Chancery, prefixed, was chiefly given to display in one sheet the number of the ministers of equity, and the inconsistent mode of their remuneration. Some errors in names and figures, in such numerous details, were unavoidable; and recent judicial changes, subsequent to the printing of the table, have displaced certain former incumbents of a few offices: the *patronage* also, in some instances, is not known. The general correctness of the table, however, cannot be impugned, the greater portion being compiled from Parliamentary returns and reports. The officers of the Court are unquestionably sufficiently numerous, if a better division of labour and a superior arrangement were effected. A suit must necessarily proceed slowly through so many *stages*; and toll must be levied to some amount at such numerous gates of justice. We cannot marvel that "it is the delight of lawyers to go on plodding in paths which reason has never visited, or having visited has deserted." It must be the interest of these persons to continue the innumerable technicalities of practice, which "lengthen simple justice into trade." It has therefore

been shrewdly said to be difficult to get money out of the hands of Justice.*

It is necessary to notice that the enquiry of the present volume is exclusively confined to the *English* Court of Chancery, which is a part only of the great system of Equity existing in the whole kingdom and its dependencies, and by no means involving the only evils of the jurisdiction. The English Court of Exchequer has an extensive *equity* province; and the Chancellor of the Exchequer is properly one of the judges, with the four Barons who preside there. The Exchequer is an ancient court of record, having cognizance of all causes and questions affecting the revenues of the crown and state. Its primary and original jurisdiction was to call the King's debtors to account by Bill filed by the Attorney General. *Fiction*, however, has prevailed here as elsewhere: *Equity* has made its inroads step by step, and any person may file a bill against another on a bare suggestion, that he is the King's Accountant, and, whether he is so or not, the fact is never controverted! It has happened that all the four

* Eh non, me respondit-il; ce ne serait pas le moyen de r'avoir ta bague. Ce gens-là n'aiment point à faire des restitutions. *Gil Blas*, liv. II. c. iv.

judges of this court have been preferred from the common-law bar ; and at the present time the Chief Baron is the only equity lawyer!* An appeal from the equity side of this jurisdiction lies immediately to the house of peers. By a Parliamentary return, dated 11th December, 1826, the following number of Exchequer Equity Bills is certified to have been filed during the last seven years :—

In the year 1820	-	-	-	-	373
1821	-	-	-	-	310
1822	-	-	-	-	268
1823	-	-	-	-	264
1824	-	-	-	-	231
1825	-	-	-	-	250
1826	-	-	-	-	259

The *Scotch* Courts of Law comprehend a concurrent equity jurisdiction. The *Irish* Court of

* If the Chief Baron and the other Barons are equally divided in opinion, the Chancellor of the Exchequer comes into Court, to rehear the cause, and “turn the scale of justice.” This has occasionally happened during the last century. In the case of *Naish v. The East India Company*, in Michaelmas Term, 1735, *Sir Robert Walpole*, the Chancellor of the Exchequer, after a rehearing of three days, gave the casting vote of decision in a question of great doubt and difficulty.

Chancery constitutes of itself a distinct and widely extending province, and numerous are the public complaints of its principles and administration.* The *Colonial* system of Equity and Appeal has been equally the subject of animadversion and remonstrance.† A detailed and comparative examination of all these anomalous courts of jurisprudence would further demonstrate the national grievance of the whole system, but the labour would be a work of years, and the restricted enquiry of these pages will sufficiently expose the evils of the great parent—the ENGLISH COURT OF CHANCERY.

The numerous important legal decisions in the different chancellorships are not recorded or noticed, because they were properly the province of a more technical work, and because the opposite characters given by succeeding Chancellors of their predecessors, and the conflicting obser-

* See Parliamentary Report of the Irish Court of Chancery. Printed February 6, 1826.

† See Appendix, No. 8, where the evils and abuses of the Colonial Courts of Equity are fully detailed from the Parliamentary Reports on Civil and Criminal Justice in the West Indies. At Montserrat, the Court of Chancery has been twice presented by the grand jury of the island as a nuisance!

vations of the numerous Reporters and Commentators, would have involved an interminable and contradictory detail.

These pages might have been published at an earlier period of last year, but the political and ephemeral object of exposing the errors and depreciating the professional reputation of Lord Eldon was not the author's purpose: the *Court*, not the *Chancellor*, is the subject of the volume. Since the greater portion was printed, various rapid and important political and ministerial changes have taken place, leading to other and no very distant alterations in the principles of government. Measures, not men, are now the objects of more impartial consideration with all parties. Nicknames and party distinctions are giving place to common sense and disinterested public spirit. A bigoted aversion to innovation, in the public mind, has yielded to an avowed desire of keeping pace with time and the exigencies of the age. It was the wise saying of our greatest English philosopher and Chancellor, that "they who will *not* apply new remedies must expect new evils; for Time is the greatest innovator: and if time, of course, alter things to the worse, and wisdom and counsel shall not alter them to the better, what shall be the

end?"* It is now no longer fashionable to couple the existence of the Constitution and Judicial Establishments with the continuance of certain ministers and judges in office: the British Public know that a sincere attachment to our national institutions is perfectly consistent with the ardent desire of correcting their abuses and extending their utility. LORD ELDON, like the Spartan lawgiver, would have fain sworn his countrymen not to alter their laws after his death till they heard from him on the subject, and, in imitation of the Locrian penal law, would have soon ordained that every proposer of a new statute should come publicly with a halter round his neck, and adventure a hanging if he failed in his undertaking. But LORD LYNDEHURST has succeeded LORD ELDON, and is pledged to an early and effective reform of his jurisdiction. The bold and comprehensive mind of the new Chancellor is able to redeem this public pledge, and if he fails in the full performance of his duty, the responsibility and guilt will be correspondingly great. Those members of the Legislature also, who have for so many years denounced the national curse of this Court, when they possess the *power* to apply the remedy,

* Bacon's Essays. Of Innovation.

will surely not violate their words in their actions. The present Session of Parliament will be the test of sincerity. In the meanwhile a work, which briefly gives the history of this anomalous court and its abuses, may meet with a dispassionate reception, and keep alive the public interest in a political and judicial subject of such extreme importance to the nation.

It is here incontestibly proved that however the evils of the English Courts of Equity may have been aggravated by the judicial incompetency and errors of the judges who have presided in them, they originated and still exist in the SYSTEM itself. Lord Lyndhurst may excel his predecessor in decision of character, but only so far will he remedy the abuses of his court; and unless his chancellorship be accompanied by a subdivision of labour, and a complete revision of the procedure and principles of the jurisdiction, it does not require the gift of prophecy to foretel that in a very few years we shall witness a renewal and increase of the public complaints of the abuses of the Chancery.

The author may be allowed to offer some few remarks on the motives of publication. Originally intending to practice at the Chancery

bar, he had devoted much time and enquiry to the origin of the Equity Jurisdiction. A laborious clerkship in an Attorney's office in London, had moreover given him that technical acquaintance with the general practice of law, which no barrister of any single court can have the opportunity of acquiring. With the details of Chancery procedure he became officially conversant. Circumstances deprived him of the means of attaining that rank in his profession to which he aspired ; ambition bowed to necessity ; and to the experience of his clerkship he has subsequently added that of a country Solicitor. They who have been disciplined by sacrificing at the shrine of independence the bold and ardent flights of youthful ambition, can estimate the motives which seek to interest the mind in some labour of diversion and utility. With these feelings he projected a History of the Law and Judicial Establishments of England ; but never anticipated that any product of his labour would be so soon submitted to the public notice, until the state of the Court of Chancery became the subject of frequent and public discussion.

Many of the suggestions and propositions of these pages may call forth the reprobation of those who denounce the pursuit of the public

good whenever it interferes with their own private interests. It is anticipated that in such a work as the present, embracing periods of history by no means satisfactorily explored, numerous omissions and errors may be pointed out by those who shall make it more their business to detect them than to appreciate the contributions to the common stock of knowledge.* He will no further notice or answer any disingenuous criticism than by perfecting and extending a future edition of his work.

The omission of many *political* remarks might have rendered the volume more popular and acceptable in some quarters, but truth compelled their publication; and no one can read the following pages without perceiving that the amendment of the Court of Chancery is deeply involved

* "A valuable publication has subsequently emanated from the Record Commission, in the folio volume entitled, "Calendars of the Proceedings in Chancery, in the Reign of Queen Elizabeth. To which are prefixed Examples of earlier Proceedings in that Court, namely from the reign of Richard the Second to that of Queen Elizabeth, inclusive, from the originals in the Tower." Vol. i., 1827. pp. 565.—The public are chiefly indebted for this work to the legal and antiquarian learning and industry of Mr. BAILEY and Mr. PALGRAVE.

in *political* considerations. A modern writer has justly remarked, "*Depuis trois siècles, l'histoire entière semble n'être qu'une grande conjuration contre la vérité.*"* The author therefore resolved, in the spirit and words of Ralph, our most honest historian, to follow TRUTH as closely as possible, without that slavish fear of treading on her heels which deters many followers from pursuing her. "*Such then I would have an Historian, fearless, uncorrupt, free, attached to liberty of speech and truth.*"†

* De Maistre du Pape, liv. ii. chap. xii.

† Τοιούτος σὺν μοι ὁ συγγραφεὺς ἔστω ἄφοβος, ἀδέκαστος, ἐλένθερος, παρρησίας, καὶ ἀληθείας φίλος.—*Lucian. De Conscrib. Hist.*

BIRMINGHAM, February 1828.

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TABLE OF THE JUDGES

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From the year 1502 to 1827;

*With references to the pages in which their judicial characters
are noticed.*

Note—By Statute 5, Elizabeth. c. 18, The Lord Chancellor and Lord Keeper have one and the same power: since that statute there cannot be a Lord Chancellor and Lord Keeper at the same time; before, there might be, and had been. By Statute 1, William and Mary, c. 14, Commissioners may be appointed by the Crown to execute the duties of the Chancellorship. They are usually three in number, and the custody of the great seal is committed to the care of the Commissioner who takes the precedence.

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1644	Sir John Culpepper, Knt., January 30th
1645	Sir William Lenthall, Knt., November 22nd
1660	Sir Harbottle Grimstone, Bart., November 3rd
1684	Sir John Churchill Knt., January 12th
1685	Sir John Trevor, Knt.
1689	Henry Powle, Esq., March 13th
1692	Sir John Trevor, Knt., November 24th
1717	Sir Joseph Jekyll, Knt., January 24th
1738	Hon. John Verney, October 9th
1741	William Fortescue, Esq., November 5th
1750	Sir John Strange, Knt. January 11th
1754	Sir Thomas Clarke, Knt., May 29th
1764	Sir Thomas Sewell, Knt., December 4th
1784	Sir Lloyd Kenyon, Knt., (afterwards Lord Kenyon)
1788	Sir Richard Pepper Arden, Knt., created Lord Alvanley
1801	Sir William Grant
1818	Sir Thomas Plumer, Knt.
1824	Lord Gifford
1826	Sir John S. Copley, Knt.
1827	Sir John Leach, Knt., the present Master of the Rolls

VICE CHANCELLORS.

1815	Sir Thomas Plumer
1818	Sir John Leach
1827	Sir Anthony Hart, Knt., the present Vice Chancellor

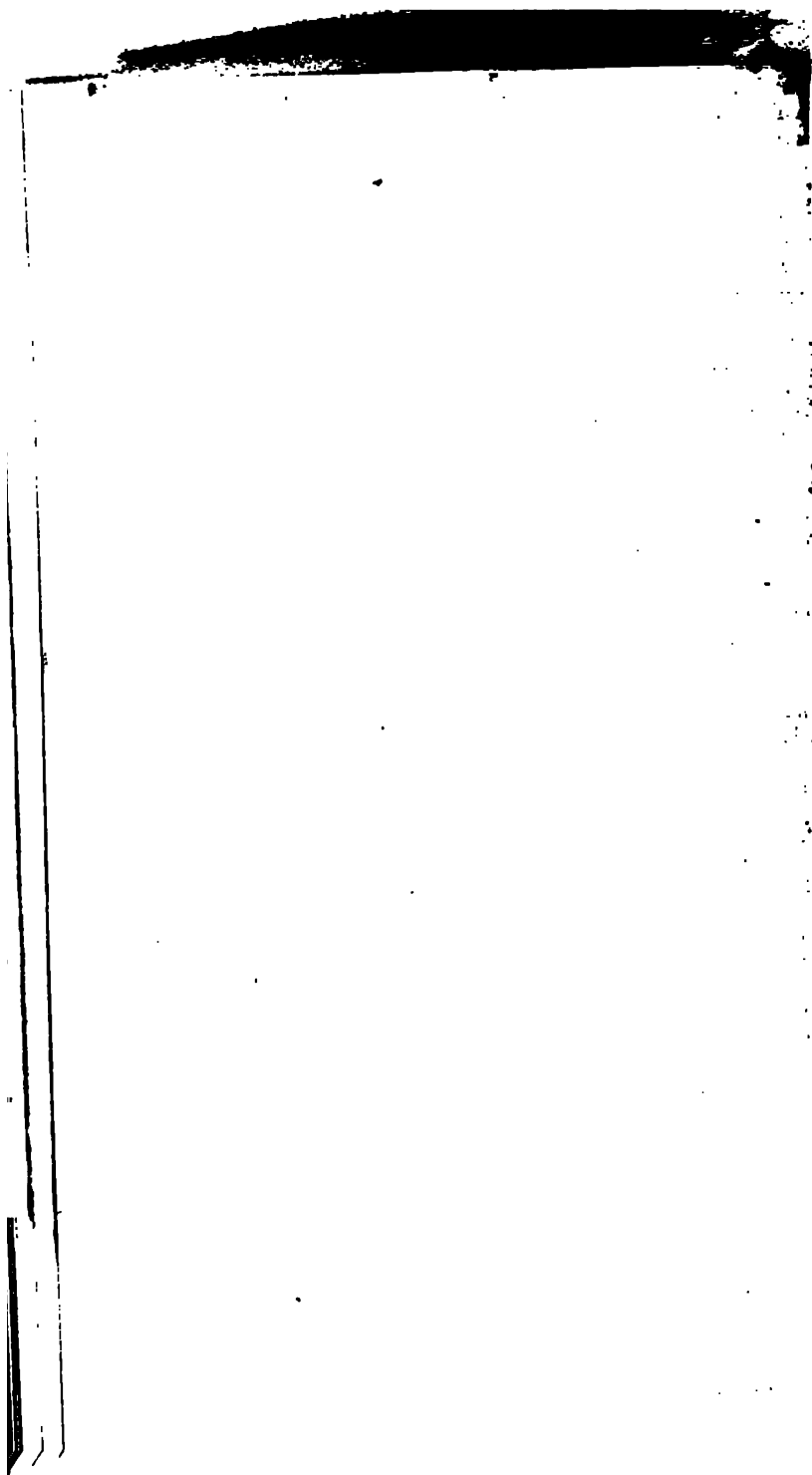
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A

HISTORY

OF THE

COURT OF CHANCERY.

CHAPTER I.

THE NECESSITY OF REFORM IN THE COURT OF CHANCERY.

GLADWIN v. BONNER.—The Lord Chancellor expressed his sincere wish, if possible, to remove this unfortunate Family out of the atmosphere of the Court of Chancery, where they had been contesting their rights ever since his Lordship was a school-boy; and Mr. Thomas Bonner's Great Grand-father was plaintiff in the Cause reported in 1. Vesey, by which he was entirely ruined, &c. He would consider the case, and give his final judgment in a few days!—*Morning Chronicle. Chancery Report. May 30, 1823.*

COLMAN v. SMITHERS.—At the sitting of the Court, an elderly gentleman presented himself to the notice of the Lord Chancellor, and addressed his Lordship in the following words:—"My Lord, I am an old man suffering greatly from the delays of the Court of Chancery. The cause which I wish to bring to a conclusion, is an Appeal from the Vice Chancellor, who made an order in favour of myself and other Creditors.—Your Lordship cannot imagine what I suffer. I have upwards of £30,000 now dependent upon the decision of this case. I am 70 years of age. I have 17 children and 26 grand-children, and I want to arrange my affairs before my death!"—*Times. Chancery Report. Nov. 25, 1825.*

THE COURT of CHANCERY is the tribunal in which *Equity* is said to be dispensed in England. The evils of this jurisdiction are now the subject of national grievance and complaint: they are palpable and cannot be denied, and require no exposition in cases or detail.

The truth of these assertions, and of the growing and grievous necessity of reformation, will appear from the following return to Parliament,* of the total amount of the effects of the Suitors in the High Court of Chancery, in the years 1756; 1766; 1776; 1786; 1796; 1806; 1816; and 1818.

IN THE YEAR	£.	s.	d.
1756, the total amount was	2,864,975	16	1
1766,	4,019,004	19	4
1776,	6,602,229	8	6
1786,	8,848,535	7	11
1796,	14,550,397	2	0
1806,	21,922,754	12	8
1816,	31,953,890	9	5
1818,	33,534,520	0	10

Subsequent returns exhibit an increasing amount of FORTY MILLIONS sterling. To this must be added the titles to real property and the Bankrupts' estates in litigation, involving numbers of persons in doubt and expence. The quantity and state of the litigation in the Court cannot be precisely given, but an uncontradicted public statement has appeared, that on the 11th of January, 1825, there were pending and ready for hearing—

Appeals	.. .. .	126
Pleas and Demurrers	.. .. .	43
Causes before the Lord Chancellor & Vice Chancellor		401
Exceptions and further Directions before ditto	..	238
Bankrupt Petitions before the Lord Chancellor,	}	60
(principally appeals)		
Ditto, before the Vice Chancellor	.. .. .	233
Cause Petitions before the Lord Chancellor	..	79
Lunatic Petitions before ditto	.. .. .	38

* Ordered to be printed, 5th April, 1819.

Cause Petitions before the Vice Chancellor	..	55
Motions before the Lord Chancellor and Vice Chancellor	.. .. .	} <i>innumerable</i>
Causes, Exceptions, and further Directions before the Master of the Rolls	. .. .
Petitions ditto	.. .. .	60

making a total (exclusive of motions to be made, and of judgments then pending before Lord Eldon) of 1577! In the three last years those aggregate arrears have not been reduced. Each of the three great judicial offices of the jurisdiction has been filled by a new Judge; it is not however a change in the persons of the Judges, but in the nature of the tribunal that can effect any real improvement. Sir Lancelot Shadwell, the present and recently created Vice Chancellor, in his evidence before the Chancery Commission asserted that "*the load of business now in the Court is so great that three angels could not get through it.*" The *appeals* also which may and will be carried to the Lord Chancellor and House of Lords, must be added to this dead sea of stagnant litigation, together with the grievances of those who silently bear wrong from the want of power to pursue their right; that is to say, of those who prefer the evils of enduring injustice, to the aggravated evils of seeking redress. And lastly must be reckoned the losses of those who, worn out by long protracted suits, are induced by the present state of Chancery Procedure, to *compromise*—which being interpreted, means a submission to a denial of justice. "By the terrors of remanetcy* the Plaintiff consents to accept a part of what is his due, giving up the rest: by *consent* the traveller gives up to the unlicensed plunderer what money he has about him, in order to save his life. By consent the Plaintiff gives

* The postponement of a cause.

up to the *mala fide* defendant, armed with delay, put into his hands by his learned partners, value to any amount, viz. to whatever can be agreed upon, with extortion on the one part, and distress on the other to settle the account."

Thus, Justice is *sold* by its unnecessary cost: it is *denied* in the excessive expence, and by false decisions: and it is *delayed* by the unnecessary *time* which the contending parties are allowed for prosecution and defence of their causes, by the artificial and complicated procedure of the Court, and by the procrastination of judgment.

The practical remedy of the above evils consists, 1. In reducing as much as possible the *causes* of litigation. 2. In reducing the *time* allowed in procedure, and in cheapening and shortening its process. 3. In reforming the principles of decision. 4. In subdividing the labour of the Court.

To probe the evils and ascertain the remedies of Chancery abuses, it will be requisite to enquire into the origin of Equitable Jurisdiction. The history of its progress, and of the various partial and proposed reforms, will throw great light on the causes of the present grievances. It will exhibit a deep-rooted and growing evil, and as dissection reveals the seat of physical disease, such an historical investigation will demonstrate, with the cause, the cure of the abuses in question.

In this enquiry, institutions will be distinguished from their administrators; and only so much of the history of past times will be referred to as relates to the object of this volume—the Reform of the Court. Litigation is the certain consequence of the collision of interests attendant upon a great population and commerce: liti-

gation is an evil that will never be eradicated; but the jurisprudence of a country ought to diminish or control it as much as possible; and it is a fundamental maxim of jurisprudence, that the perfection of a tribunal for the administration of Justice is proved in its dispensing the maximum of Justice with the minimum of delay and expence.

A sweeping and unqualified reflection on the English system of law is not intended. There are superior *codes* and forms in Europe, useless from the degradation of the people and the corruption of the administrators; on the other hand there are institutions with excellent officers. Faulty as the English system of jurisprudence doubtless is, it cannot be denied that the control of public opinion, aided by the sagacity and probity of the Judges, in all cases of private interest, diminish its evils and advance its benefits as far as is possible with such defective institutions. "It is however to publicity more than to every thing else put together, that the English system of procedure owes its being the least bad system as yet extant, instead of being the worst. It is for want of this essential principle more than any thing else, that the well-meant labours of Frederick and Catherine in the field of Justice, have fallen so far short of the mark at which they aimed."* Hence in the importance of publicity is discovered the utility and necessity of investigating and exposing defects originally existing in, or subsequently introduced into the system of English Equity, and of pointing out wherein the Court of Chancery is inadequate to the exigencies of the present time.

Some general remarks were intended on the principles of JURISPRUDENCE, as preliminary to the enquiry, and as a species of text to which the practical suggestions on

* Bentham; French Judicial Establishment. 1790. p. 26.

reform might have been submitted. But the necessary length to which this history will extend has precluded that intention, and the reader is therefore referred to the article *Jurisprudence*, in the supplement to the Encyclopedia Britannica, for the most logical and concise display of the principles of the science extant. The object of the science is there accurately defined as the protection of Rights. The means which are best calculated for the attainment of that end are pointed out, the enactments of the legislature with respect to rights, and to those acts by which they are violated. The Agency best calculated to carry those enactments into effect is afterwards ably shewn; 1. as to the operations essential to that agency; 2. as to the agents by whom they are most likely to be well performed; and 3. as to the best securities that can be taken for the good conduct of those agents.

An attentive and unprejudiced consideration of the great principles asserted in that Essay, cannot fail to discover that the *practice* of the English Law is most singularly at variance with the *principles* of Jurisprudence. It is strictly true, in the words of its author, that "this mischievous mess, which exists in defiance and mockery of reason, English Lawyers inform us is a strict, and pure, and beautiful exemplification of the rules of logic. This is common language of theirs. It is a language which clearly demonstrates the state of their minds. All that they see in the system is the mode of performing it. What they know of logic is little more than the name."

CHAPTER II.

THE ORIGIN OF THE CHANCERY.

The Laws of most kingdoms and states have been like buildings of many pieces, and patched up from time to time according to occasions, without frame or model.—*Bacon*.

It is difficult to point out a single nation living under a system of good laws. This is not attributable merely to the circumstance that laws are the productions of men, for men have produced works of great utility and excellence; and those who invented and brought to perfection the various arts of life, were capable of devising a respectable code of jurisprudence. But laws have proceeded in almost every state, from the interest of the legislator, from the urgency of the moment, from ignorance and from superstition, and have, accordingly, been made at random, and irregularly, just in the same manner in which cities have been built.—It was only after London had been reduced to ashes that it became at all fit to be inhabited. The streets after that catastrophe, were widened and straightened. If you are desirous of having good laws, burn those which you have at present, and make fresh ones.—*Dictionnaire Philos. art. Lois*.

VOLTAIRE, in the strong and figurative expressions of the sentences, above quoted, does not mean to advocate the sweeping and entire destruction of the ancient systems of Law, but merely by an apt and striking simile to shew the necessity of a bold and comprehensive reformation, by melting as it were, the body of the law, and re-casting it from the old materials into forms better suited to the wants of the present age. The observations so frequently applied to the European Codes of Laws are equally applicable to the British Jurisprudence, viz. that its parts have been composed to meet present

emergencies and constitute no systematic whole; that they contain many discordant principles, many jarring forms, much unmixed evil, some imperfect good, many institutions which have long survived their motive, and many of which reason had never been the author, nor utility the object.*

The history of the ancient British Laws and forms of jurisprudence, is involved in the history of the *Romans*, the *Saxons*, the *Danes*, and the *Normans*, who successively invaded England, and introduced more or less of their several customs, laws, and legal institutions. Thus a *composite* order of law arose; the sources of which have been pronounced as undiscoverable as the springs of the Nile; and Sir Matthew Hale, the venerable Historian of the Common Law, declares "that it is a moral impossibility to give any satisfactory conjecture touching the original of our laws." Sir Dudley Digges, an eminent Judge, in a Parliamentary debate† satirised the superannuated character and defects of the Common Law, and the superstitious worshippers of its antiquity when he quoted in its praise a Latin pedigree—

Ingrediturque solo, caput inter nubila condit.

What though it walks the earth with solemn tread,
Yet in the clouds it hides its sacred head!

The history of the Court of Chancery is inseparably connected with that of the other courts of law, and the origin of its equitable jurisdiction is only to be traced by exploring the great course of justice to which Equity is but a tributary stream, not the main channel. In the investigation however of its origin and progress,

* Butler's Reminiscences. p. 45.

† Rushworth. vol. i. p. 528.

no further antiquarian research will be admitted than is necessary clearly to detect and display its progressive advances to the present state. The enquiry in this volume is not what *was*, but what *should be*: the cry of "venerable antiquity," and "no innovation," is the fortress of corruption and the attempted barrier against the march of time and improvement. The right of Englishmen to the reform of the Court of Chancery, is not to be tried by a jury of Antiquaries, nor can the demands of justice be estimated or provided for by their obsolete prescriptions. The famous Lord Brooke well remarked, "Why should you stand so much upon Precedents? The times hereafter will be good or bad; if good, Precedents will do no harm: if bad, power will make a way where it finds none." Our Philosopher Bacon, not equally great as a Chancellor, has bequeathed in one of his invaluable legacies to his country, the *Novum Organum*, his judgment on the absurd idolatry paid to every thing that can plead the sanction of age. "The opinion which men entertain of antiquity is a very idle thing, and almost incongruous to the word: for the old age and length of days of the world should in reality be accounted Antiquity, and ought to be attributed to our own times, not to the youth of the world, which is enjoyed amongst the ancients: for that age, though with respect to us it be ancient and greater, yet with regard to the world it was new and less." The principles therefore of Chancery reform are not to be sought in the black letter collections of Bibliomaniacs.

It is well known, that in the fictions of law and the language of Lawyers, the KING is the "Fountain of Justice." Justice, or what was denominated justice in England, has from time immemorial been administered in the name of the King. Legal Jurisdiction was ever

considered his most valuable privilege and dignity : he was styled *Capitalis Justiciarius Angliæ* : the *place* of judicature originally followed his person, and was called the *Curia Regis*, or King's Court.—In the earliest periods of his office, he probably exercised the judicial functions in person.* What however is fiction now, was in those days reality, and might have had some necessity and reason to defend it. Justice was really administered by the King : it was one great branch of his employment, and some arbitrary and dictatorial power was perhaps *then* necessary to make laws and carry them into execution. In the perpetual civil and foreign warfare of the early British and feudal ages, in the ignorance and slavery of the People, in the fierce contentions of the great Landed Proprietary and Aristocracy alternately with the Crown and the people, a King invested with extraordinary judicial power may have been consistent with the best interests of the country. Justice has fortunately outlived that necessity ; and though the fiction still survives its utility, entailing innumerable and unknown evils in the English and Colonial system of law, it cannot long maintain itself. Mr. Bentham† has incontestably and admirably shewn that the purest fountain of justice is the Nation, through the channel of the Legislature, that Justice

* Henry I. at leisure times sate every day in his own house till twelve o'clock, to hear and determine causes, *secum habens Comites Barones et Vavusores*, whence he obtained the name of *Leo Justitiæ*. (Cottoni Posth. p. 48. Madox. Lambard's Archion.)—By the Plea Rolls in the Treasury of the Exchequer, it appears that Henry II., Richard III., and Henry VII. often presided personally in Court.

† Draught of a New Plan for the organization of the Judicial Establishment in France ; proposed as a succedaneum to the Draught presented, for the same purpose, by the Committee of Constitution, to the National Assembly, Dec. 21, 1789. Privately printed, 1790.

should not be administered in the name of the *King*, or of any single person : that the idea of a King being the fountain of Justice, as the lawyers term it, is a remnant of feudal barbarism ; a branch of that poisonous tree which ought to be rooted up : and that the judges and officers, exercising judicial power, being solely or arbitrarily appointed by a Chancellor or King, introduces justice into the insalubrious air and region of a Court. These may be bold remarks for the present age, but the day is not far distant when they will be received and adopted as invaluable maxims of future legislation.

It is very certain that the first appointment of the offices of *Forste*, *King*, *Dux*, *Général*, and *Judge*, was, though not entirely, yet principally for the administration and necessities of justice. It became necessary to provide for the execution of the laws ; and it was early discovered in the progress of society, that the lives, personal liberty and property of individuals, and their perpetual claims against each other for the maintenance of rights and redress of wrongs, were not to be determined or controlled without judicial establishments and territorial courts of justice. “ In order therefore to prevent the fatal effects of these evils, our German Ancestors, by common consent or election, appointed over each pagus or province, a district-president or judge, by them, most probably, denominated *Forste*, but by the Roman authors sometimes called, in their language, King, sometimes General, though most usually Prince, with plenary authority to go round the district committed to his charge, and to hear and determine all causes or matters of contention, which might arise within the limits of his jurisdiction. By this wise provision, proper care was taken for the regular distribution of

justice, with the least trouble and inconvenience to individuals, as they were not to go far, nor to wait long for it, nor to be at any expence in procuring it.”* —Thus it appears that the office of a King was no sinecure: his duties were important and extensive; requiring no ordinary mental and physical exertion. This plain and simple account of the royal pedigree may be considered disloyal, and as invading that mystery which some timid persons think necessary to the preservation of the monarchical power and prerogative, but it is nevertheless true. The King of England, fortunately for the English People, is a constitutional monarch: he was not constituted for ornament, but for use; and the history of our country and government proves the usefulness of occasional recurrence to first principles. †

* An Enquiry into the foundation of the English Constitution; or an Historical Essay upon the Anglo-Saxon Government, both in Germany and England. By *Bishop Squire*. 1745.

† “A *king*, among the old Saxons, in probability, was anciently a commander in the field, an officer *pro tempore*, and no necessary member in the constitution of their state; for, in time of peace, when the commonwealth was itself, the executive power of the law rested much in the nobility; but in times of war, and in public distractions, they chose a general, and all swore obedience unto him, *during the war*: it being finished, the general laid down his command, and every one lived *æquo jure, propria contentus potestate*. But in their transmigration into Britain, the continuance of the war causing the continual use of the general, made that place of office to settle and swell into the condition of a king; and so he that was formerly *Dux*, became *Rex*; there being no more difference in the nature of their places, than in the sense of the words; the one signifying to *lead*, the other to *govern*: so he that was formerly a servant *for the occasion*, afterwards became a *servant for life*: yet clothed with majesty, like some bitter pill covered with gold, to make the *service* better tasted.—’Tis evident, the Saxons’ fealty to their king was subservient to the public safety; and the public safety is necessarily dependent upon the liberty of the laws. Nor was it to be expected that the *Saxons* would endure a king above this pitch. For those parts of *Germany*

Having thus traced the *secondary* origin of English Law to the will and power of the King, it is not necessary to detail the history or growth of the jurisdiction of the Courts generally. It is sufficient to remark that with population, wealth, and civilization, the Anglo-Saxon and Norman jurisdictions were successively extended and improved. As the business of legislation and administration increased, and when the monarch was no longer able to transact it in person, or perhaps had more important and seductive affairs to engage his attention, he appointed *deputies* or assistants, with various titles: they performed the labour, represented him in the courts of justice, exercised his power, and used his name. In the same manner it is probable that in the increasing importance and multiplicity of the national concerns originated a PRIVY COUNCIL to supersede the necessity of convening the barons and popular representatives on every new and occasional affair requiring advice. The latter circumstance is only here alluded to, as the equitable jurisdiction of Chancery was subsequently connected with, or proceeded from the King's Council.

(whence they came) that had the regiment of kings (which these had not) yet used they their kings in no other manner than as *Servants of State*, in sending them as ambassadors and captains, as if they claimed more interest in *him*, than he in them; and the historian saith expressly, that amongst those people in Germany that had kings, their kings had a defined power, and were not *supra libertatem*. Nor was this a dead word; for the people had formerly a trick of deposing their kings, when they saw them peep above the ordinary reach; and this was an easy work for them to do, whenever neighbouring princes of their nation watched for the windfalls of crowns. This made the monarchical crown in this land (England) to walk circuit into all parts of the country, to find heads fit to wear it, until the *Norman* times."—*N. Bacon's Historical and Political Discourse of the Laws and Government of England, &c. with the M.S.S. notes of John Selden, &c. 1647.*

Leaving the investigation of the origin of the terms *Chancery* and *Chancellor* to the industry of the Etymologists, it is sufficient to state that Selden traces the first exercise of a Royal Seal to the time of King Ethelbert, A. D. 605.* It is probable that the office was originally that of Secretary to the King, and that the business of it was to receive the petitions and supplications of the subjects; and to make out the writs and mandates. As the King eventually ceased to try suits personally, it probably became necessary to *ratify* the enquiries and judgments of his deputies or judges. The official mark of this ratification was the affixing of his Great or Royal Seal, and hence originated the appointment of a Lord Keeper for that purpose, sometimes denominated Lord Chancellor, and sometimes a separate office from the other; thus, for example, in the early part of the thirteenth century, in the reign of John, the office of Keeper of the Great Seal was distinct from that of Chancellor, the former having the custody of the great seal, and the latter the power to use it.

The first written body of English Law, is said to have been promulgated in the Heptarchy, by Ethelbert, about the year 630, and enacted with the consent of the states of his kingdom.† But the reign of Alfred is generally considered as the commencement of what is denominated the *Common Law*—a universal tradition and long practice (which pre-supposes a previous publication) being the work of our Saxon Ancestors, but the successive additions to and amendments of which it is impossible

* The genuineness of the document in question is, however, doubted. But the curious reader may meet with every thing touching the enquiry, in the "Opening of the Great Seale of England:" a quarto tract, 1643, by that "Utter-Barrester of Lincoln's Inne," *William Prynn*.

† Wilkins, *Leges Sax.* p. 13.

accurately to discover, and indeed it is immaterial to the present enquiry. Alfred was the great modeller of the early jurisdiction: he founded territorial and local judicial establishments, from all which there lay an appeal, in default of justice, to himself in Council. The overwhelming number of these appeals induced him to carry into general practice the principle of juries, to educate his nobility in the law, and to punish with unsparing severity malversations in office. The cheapness of justice was a main object in all the judicial institutions of this great monarch.* The forms of the Saxon law proceedings baffled the deep antiquarian research and learning of Selden, who could nowhere discover any traces of them. But from various circumstances, and the well-known maxims and forms of law in ancient Germany, they were certainly extremely simple and brief, until in the introduction of the feudal and Norman laws, by William, (commonly called the Conqueror) and of the Canon and Civil law by the Clergy, originated the present complication and verbosity.† Prior to the conquest there were, no doubt, various compilations of the English laws and certain customs, which were subsequently confirmed by William, and by the succeeding charters of Henry I., Stephen, and Henry II. It is a vulgar error that Charters were the gift, the grace and favour of Monarchs to their Kingdom; they were in fact generally declaratory of ancient rights long strug-

* Among all the northern nations dignified by the appellation of "barbarians," the rights of the people were specially protected. By the old French Law the Poor had pre-audience of the King, *because they could not wait*.

† For a minute and valuable account of the Laws of the Anglo-Saxons, see Mr. Sharon Turner's *History of the Anglo-Saxons*, vol. iii. Appendix, No. 1. Oct. ed. 1820.

gling with aristocratical encroachments and the gripe of *prerogative*; and it is the remark of our best historians that the more charters we meet with, the more evidence of perturbed times and despotic usurpation; for charters were the tombstones of tyranny and the fetters of monarchs.

Cancellarius originally signified the registers or actuaries in court; *grapharios*, *scil. qui conscribendis et excipiendis judicum actis dant operam*. The Chancery in the time of William I. was a college of clerks, instituted to form and enrol the King's writs, patents, and commissions: it was managed by the Keeper of the Seal, and was anciently held in the Exchequer, where the great seal was commonly kept and the writs generally sealed. The Chancellor was then in precedence only the sixth officer of rank in the King's Court,* he was almost always an Ecclesiastic, and one of the King's chief counsellors. Very little is known of the duties of the office, except that the Chancellor was accustomed to supervise the charters to be sealed, and also the acts and precepts issued in proceedings depending in the King's Court.

The *Aula* or *Curia Regis* was therefore instituted in ease of the King, as were afterwards the Justices in Eyre in ease of the Curia Regis. It originally comprehended all the jurisdictions now shared by the Chancery, the King's Bench, the Common Pleas, and the Exchequer. When the inferior and local courts failed of doing right, relief was sought from the Curia Regis, which was thus invested with the power of correcting the wrongs and injuries of all other courts. The minute history of the pleas and business of the Court, and of

* The Chief Justice, Constable, Mareschal, the Steward and Chamberlain.

the writs of false judgment is unnecessary. The privilege of resorting to the superior jurisdiction, was of course chiefly annexed to the important causes, and granted to persons of high rank and great property, and also particularly extended to uphold the oppressed against powerful oppressors.—The Norman maxims and principles of law were speedily interwoven with the ancient British and Saxon jurisprudence, and pleadings were drawn in the Norman language. The ancient, simple, and popular judicature of courts of barony and county courts was soon merged in the power of appeal to the King's Court; and as the number of suits increased, the appointment of itinerant judges substituted the circuit assize for the old local and territorial jurisdiction. The Justiciars commenced their regular periodical circuits or *iters*, during the reign of Henry II. determining the pleas or causes within the several counties, but saving to the subject a future resort or appeal to the Curia Regis.*

We have no accurate information of the *mode* in which application was anciently made for the liberties of the King's Court; but it is probable that the applicant either paid or undertook to pay the King a fine to have the privileges of a suitor, and *justitiam* or *rectum* in his Court. And thereupon he obtained a Writ or Pre-

* The Reader is referred for the most erudite and interesting account of the judicature of the King's Court, and of the institution of *iters*, to MADOX's invaluable and (to the general reader) comparatively unknown History and Antiquities of the Exchequer of the Kings of England, which the author modestly describes as "an *apparatus* towards a history of the ancient law of England"—an apparatus that has been often most industriously used by many writers, without due acknowledgment. Compared with the extraordinary research and discoveries of that work, the popular "Histories of England" are but skeleton narratives, and no historical reader should omit the frequent consultation of MADOX.

cept, under the King's Seal, from the Keeper or Chancellor. Thus in process of time the King's Chancery was the spring or first mover of law proceedings, and hence the principal or *Original Writs* for the commencement of Causes, were called *Writs of Chancery*. The further investigation of the Antiquities of the Chancery may be seen at length in Spelman, Selden, and Dugdale, and in Madox, chap. iii. sect. 7.

The Chancellor had under him certain clerks, according to the pressure and exigencies of business, and here commenced the fountain of *fees* and *gratuities*—"gratuity the mother of extortion," and of the great and increasing amount of fees and costs, recently denounced as a "leprosy rapidly spreading over the body of the law, and which, if not cured, will soon destroy its constitution."*

The mention of the office of *Chief Justicier* or Chief Justice of England, the president or principal *Judge of the Curia Regis*, must not be omitted. This office and title is believed to be of Norman origin, introduced by the Conqueror. Odo, Bishop of Baieux, and William Fitz-Osbern were appointed by William his Custodes Angliæ, or Regents, during his journey into Normandy, A. D. 1067. The exact judicial authority of the office is involved in considerable doubt, and its precise distinction from the High Stewardship of England is also "buried deep in the obscurity of ages," but it was second only to the Royal prerogatives and appears to have exercised many of the present powers of the

* Hitherto every attempt to reform abuses in the administration of the law, has tended to confirm the evil, until what was given as a *gratuity*, or obtained by *extortion*, assumed the name of a *reasonable fee*, which reasonable fees have in process of time acquired the denomination of *lawful fees*." *Love's Observations*, p. 7.

Chancery, and to have possessed a most extensive jurisdiction.—The arbitrary appointment and removal of this important officer was a dangerous power, and the growing intelligence and influence of the Barons may be observed in the Parliament assembled at Oxford, in 1258, insisting that the Justiciary should be *annually* chosen, with their approbation. The office however was soon afterwards abolished, and discontinued by Edward I.; or, according to Dugdale and Spelman it ceased about the 45th. Henry III., when the jurisdictions began to be subdivided, and chief justices were appointed in his place. This officer certainly possessed a species of equity character or visitatorial power: he rectified “law less justly done,” and removed such functionaries as were guilty of abuse of office. Brady insinuates that the office was suppressed from its rivalry of, and frequent interference with the royal prerogative; sometimes the Chief Justiciary arrogated supreme legal power. At all events the Historian says that the inferior justices were “less popular, and so less factious, and more easily to be commanded by the Prince, yet more knowing in the law, which by this time was become a very sublime mystery, very intricate and involved.”*

This introduction into England, by William the Norman and his sons, of the continental legal idioms and law-craft “strangled justice in the nets of form,” and literally verified the ironical observation of the Roman Satirist:—

“Gallia caudicicos docuit facunda Britannos.”†

Eloquent Gaul taught the British Lawyers.

* Brady. Preface to the Norman History; fol. 1685, vol. 1. p. 154.

† Juvenal. Sat. xv. l. 111.—The same Poet in the seventh satire calls Africa “nutricula caudicorum,” the nurse of lawyers; and says that

The Clergy henceforward filled all the offices of justice. It appears that numbers of them came over for this express purpose. In the reign of William Rufus, Malmsbury says, there was “nullus Clericus nisi causidicus,” no clerk who was not a Pleader; and by transacting all law proceedings in the Norman language, they monopolized the keys of the lock of justice.

The Conqueror is also thought to have established the first Ecclesiastical jurisdiction, in which all causes of a spiritual nature were to be decided according to the Canons of the Church or episcopal laws. Thus another ingredient was added to the medley of English Law—the *Canon* law, an Ecclesiastical usurpation, and one of the most formidable engines ever devised against the happiness of mankind.

About the year 1140, Vacarius first read public lectures at Oxford, on the *Civil* Law, within ten years after the discovery of Justinian’s Pandects. Theobald,* a Norman Abbot, preferred to the see of Canterbury, first

Gaul and Africa were the places for those who set a price upon their tongues. Those countries were then remarkable for great lawyers, who got large fees. It was necessary to make a *trade* of the profession, for as Juvenal remarks: “Rara in tenui facundia panno.” Eloquence is rare in a mean clothing, and who, therefore, would trust a lawyer of mean appearance with an important cause?

* Peter of Blois records a curious circumstance of this Archbishop, which shews the attention which was then given to the study of the laws: “In the house of my master are several learned men, famous for their knowledge of law and politics, who spend the hours between prayers and dinner, in lecturing, disputing, and debating causes. To us all the knotty questions of the Kingdom are referred, which are produced in the common hall, and each one in his order, having first prepared himself, declares, with all the eloquence and acuteness in his power, but without wrangling, what is wisest and safest to be done. And if God suggests the best opinion to the youngest amongst us, we agree to it without envy or detraction.”—Pet. Bl. ep. 6.

established the Professorship. It appears, however, to have made but little progress, and to have excited not a little the jealousy and opposition of the Barons and People. Another poetic prophecy was then nearly fulfilled :

“ Romanos rerum dominos gentemque togatum.”*

The subject world shall Rome’s dominion own,
And prostrate shall adore the nation of the gown.

In 1144, Stephen issued a proclamation forbidding its study ; Vacarius returned into Normandy ; and the zeal of the laity for the preservation of their ancient laws neutralised the exertions of the Clergy to introduce the new system. Hence arose a severe contest between the Clergy, on behalf of the Civil and Canon Law, and the Nobility and Laity, in defence of the Common Law. The effect of persecution against the professors and students of the Civil Law, by the Common-law Lawyers may be seen in the remark of John of Salisbury, “that by the blessing of God, the more the study of it was persecuted, the more it flourished.” The Clergy, however, were ultimately defeated. The struggle continued through the reign of Henry II. to that of Edward I., when the old law of England triumphed (see the Statute of Merton, 20 Hen. III. c. 9. and 12 Rich. II.) Early in the reign of Henry III. some episcopal institutions forbade Ecclesiastics to appear as advocates *in foro seculari*. They then abandoned the temporal courts, and discreetly concentrated their attention to the object of enlarging the peculiar jurisdictions of their own ecclesiastical courts, and maintain-

* Virgil. *Æneid*, i. 282.

ing their asserted independence of the secular power of the law and state. These facts will sufficiently explain why some of the proceedings of the Court of Chancery are so conformable to the civil law.

It is, however, but just to state that the present administration of the Civil and Canon Law as variously modified in the Ecclesiastical, Admiralty, and University Courts, is, as regards dispatch, cheapness, and justice, much superior to that of certain of its contemporaries.

But not to anticipate the order of time, it will only be necessary here to remark that the early history of the Chancery during the first twelve centuries, discovers little trace of any Equitable Jurisdiction. The great offices of Chancellor and Lord Keeper were successively filled by Ecclesiastics. The bulk of this volume would be unnecessarily increased by any chronological list of their names, or any details of their political and official biography. The greater number may be fairly judged by the character of one of these ecclesiastical Chancellors, Robert Bluot, Bishop of Lincoln, a wholesale dealer in Church Preferment, and who died in prison for his misdeeds (where many more ought to have expired,) of whom Coke dryly observes "that he lived without love, and died without pity, save of those who thought it pity he lived so long." (A. D. 1090.)

In 1258, 42. Hen. III., Walter de Merton held the seal. The nation at this time appears to have been worn out with oppression, and the Barons, with their military tenants, attempted the work of reformation, by forcing on the King articles for redress of grievances.* The Chancellor was to be chosen by twenty-four commissioners, twelve to be appointed by the King and twelve by the Barons.

* Rapin, vol. 1. 332.

A flood of corruption followed this incongruous deluge of jurisdiction. The Norman Kings, who were ingenious adepts in realizing profit on every opportunity, commenced the *sale* of Judicial Offices. The Plantagenets followed their example. In Madox, chap. ii., and in the Cottoni Posthuma, may be found innumerable instances of the purchase of the Chancellorship, and accurate details of the amount of the consideration monies. The example of a King is said to be a warrant to his subjects. What was *bought* must, of course, be *sold*, and justice became henceforth a marketable commodity, and the sale of it a staple trade. Madox truly describes the sale of judicial redress as the worst abuse under the Anglo-Norman Government. The Courts of Law became a huckster's shop: every sort of produce, in the absence of money, was bartered for "justice." "The King, we are often told, is the fountain of justice; but in those ages, it was one which Gold alone could unseal—men fined to have right done them; to sue in a certain court; to implead a certain person; to have restitution of land which they had recovered at law!" —(Hist. Excheq.)* The same fountain, it must be

* Madox, in his 12th chapter, gives various curious instances and details of Fines on Law-proceedings which were long the most lucrative branch of the royal revenue. They are classed under five divisions:—

- I. Fines to have Justice and Right.
- II. Fines for Writs, Pleas, Tryals, and Judgment.
- III. Fines for expedition of ditto.
- IV. Fines for delay thereof.
- V. Fines payable out of the Debts to be recovered.

Benet de Blakeham gave two Palfreys and one Hawk, that Ralph, son of Brian, and others might be summoned to appear before the King's Justices to answer to the said Benet, for his Chattels, which they unjustly carried away and spoiled. (Mag. Rot. 9. J. Rot. 17.) Hugh de Normanvill fined

remembered, is still flowing, although the labour and wisdom of after ages have confined its streams within narrower channels, and conducted them through districts in which they are turned to some good account. It was said of old that the secret of Government was first disclosed when it was shewn that an Emperor might be created elsewhere than at *Rome*; in like manner it may be said that Justice was unveiled in England when Laymen could read and write, and perform the duties of an Ecclesiastical Chancellor; and the Ecclesiastics perfected this change when Pope Innocent enjoined Richard I. to remove Walter Hubert, Archbishop of Canterbury, from the office of Justiciary, and denounced the interference of Ecclesiastics in secular affairs.* (Matth. Paris. in anno 1198.)

in one Horse and one Hawk, and two dogs for Partridges, to have a Writ, &c. Bacon, cheese, seed, and every sort of agricultural produce, were a circulating medium, exchangeable for justice! After the same principle the Barons paid fines for the King's Licence to marry certain parties. See *Madox passim*. These facts throw great light on the remedial clauses in the great Charters of Liberties. Thus Madox says "by *nulli vendemus*, were excluded the excessive high fines: by *nulli negabimus*, the stopping of suits or proceedings, and the denial of writs: by *nulli differemus*, such delays as were before wont to be occasioned by the counterfines of Defendants (who sometimes outbid the Plaintiffs) or by the Prince's will."—Chap. xii. Sect. 6.

* In the first year of the reign of John, A. D. 1199, this same deposed Justiciary, Walter Hubert, Archbishop of Canterbury, was created Chancellor, on which occasion a Nobleman is reported to have observed in scorn, (Rapin, vol. i. 261) "I have often seen a Chancellor made a Bishop, but I never before saw an Archbishop made a Chancellor." Hubert received it as a reward for assisting the King in attaining the crown. His acceptance of the office appears to have been considered a sad disparagement to his ecclesiastical dignity. Indeed, not many years previous, at the council of Melfi, under Pope Urban II., A. D. 1190, the canonists had denounced the union of divinity and law as abominable: "*Falsa sit pœnitentia (laici) cum penitus ab officio curiali vel negotiali non*

It is time now to proceed towards the introduction of the Equitable Jurisdiction of the Court. This is not mentioned by any of our ancient law writers, Bracton, Glanvil, Fleta, Britton, or by the author of the old *Dialogus de Scaccario*.

Fleta (circa Edw. 1.) gives the following account of the Chancery.

“ There is among the rest, a certain office called the Chancery, which ought to be committed to a prudent and discreet person, as a Bishop, or other Clergyman of great dignity, together with the care of the great Seal of the Kingdom; whose substitutes are all the Chancellors in England, Ireland, Wales, and Scotland, and all who have custody of the King's Seals, every where, except the keeper of the Privy Seal. To whom are associated Clergymen, honest and circumspect, sworn to our Lord the King, who have a more ample knowledge in the Laws and Customs of England. And to their office it belongs to hear and examine the Petitions and Complaints of Plaintiffs, and to give them a Remedy, according to the nature of the Injuries shewn by them.”
c. 18.

recedit, quæ sine peccatis agi ullâ ratione non prævalet.)” (Act. Concil. apud Baron, c. 16.) “The repentance of a layman is fallacious unless he abandons the pursuits of law and commerce, which it is impossible to exercise in any manner without sin.”—It was the almost contemporary remark of one of the Fathers, that there are three sorts of people who make hardly any use of the laws they prescribe to others:—“No man departs more from justice in affairs than a lawyer; no man observes less the regimen of health than a physician; no man fears less the remorse of conscience than a divine. Lawyers who so much advise others to go to law, seldom engage in it themselves; physicians who prescribe so many remedies to their patients, take very few in their own illnesses; and divines who specify to others so many articles of faith, believe very few things.”

CHAPTER III.

ORIGIN OF EQUITABLE JURISDICTION.

OPPOSITION TO IT IN THE REIGNS OF EDWARD III. AND
RICHARD II.

THE COURT of EQUITY is now become the court of the greatest judicial consequence. This distinction between Law and Equity, as administered in different Courts, is not at present known, nor seems to have ever been known, in any other country at any time. It seems probable that when the Courts of Law, proceeding merely upon the ground of the King's original writs, and confining themselves strictly to that bottom, gave a harsh or imperfect judgment, the application for redress used to be to the King in person, assisted by his Privy Council; and they were wont to refer the matter either to the Chancellor and a select committee, or by degrees to the Chancellor only, who mitigated the severity or supplied the defects of the judgments pronounced in the Courts of law, upon weighing the circumstances of the Case.—*Blackstone's Commentaries*. b. iii. ch. 4.

IN the preceding chapters the origin and growth of the judicature founded on *Prerogative*, and its inroads on the Ancient Courts, have been briefly detailed to the period of the Conquest.—A more particular history would not advance the objects of the present inquiry:—indeed it would occupy volumes of historical details. The circumstantial narrative would be uninteresting to the general reader, and the law student will better inform himself by consulting the works of the old legal writers.

The Chancery has been shewn to be, in the homely language of Lambard,* “the forge and shop of all originalls.”—In the course of time it gradually assumed an equitable jurisdiction, dispensing *equity*, on rules of decision distinct from the literal maxims of law. The Chancellor progressively obtained and exercised the power of moderating and tempering the written and common law. Lambard quaintly says, “to apply one general law to all particular cases, were to make all shoes by one last, or to cut one glove for all hands, which how unfit it would prove, every man may readily perceive.”† The Chancellor specially considered the person, time, place and other circumstances of every particular case, and was supposed to make his decision on the rule of nature and conscience, and not by the letter of the national law.

The rise and progress of Equitable Jurisdiction must be traced in the history of the Norman and Plantagenet dynasties, and lastly in the increasing civilization and opulence of the country.—It originated in the contentions and jealousies of the three estates of the realm. The People fled to the King for redress against the oppression of the Aristocracy, and from suborned Judges and Juries. The Monarch seldom missed an occasion for advancing his prerogative and of fortifying himself against the growing power of the Nobility: he took the opportunity, in remedying injustice, at the same time to extend his judicial authority. On the other hand, when the monarchical usurpation goaded the other two estates to union against the crown, the People and Barons joined in controlling the inroads of royal power.‡ The growing intelligence of

* Archion. p. 58. ed. 1635.

† Id. p. 78.

‡ See Brodie, vol. i. p. 166.

the country ultimately fashioned and confined the Court of Chancery to its present jurisdiction of determining the exceptions to general rules.—Although the *mode* of equitable jurisdiction, as administered in Chancery, is peculiar to England, yet the *principle* has been more or less adopted in courts of judicature in most countries which have attained a certain degree of political refinement. Mr. Butler* has excellently exhibited this analogy in the Roman law, where the Prætor certainly pronounced equitable decrees, the general object of which had sometimes a corrective, and sometimes a suppletory, operation on the subsisting laws—substituting certain equitable principles of justice in lieu of the more rigid technical rules; and where the law was silent, supplying its deficiencies by arbitrary dicta.

The present existing Courts of Justice originated therefore in the *delegation* of the royal power. The applications to the Monarch for judicial relief were by *Bill* or *Petition*. They were sometimes preferred to him in person, and sometimes in Parliament or in Council. The *Grand Council* and the *Privy Council* had their successive interests and powers in the transactions thus brought before them. We need not wander in those 'times which have been described as "Rome's hour and the power of darkness," or note all the contracts and compromises between Popes, Kings, Nobles, and struggling Freemen, which from time to time changed the form and effect of these early judicial proceedings. The national records, however, exhibiting the constant protests and remonstrances of the honest and wise opponents of despotic encroachment, are worthy of citation, as they illustrate the causes and practical remedies of

* *Horræ Juridicæ Subsecivæ*. ed. 1807. p. 66.

the judicial grievances under which the nation still suffers : they will shew the progress of the destructive ivy round the oak, and prove that the rust of barbarism still cankers the vitality of English Justice.

One of the early uses of Parliaments appears to have been the assisting the King in disposing of and answering the Petitions which were presented on the meeting of every new parliament. Parliaments it is well known were anciently *sessional* : they were called for specific objects, and as a celebrated constitutional writer has proved, " the yearly parliaments were fresh and fresh."* As they only met at intervals for a few days, the increasing pressure of business incident on the increasing wealth of the country caused the Parliament to resort to the system of delegation. A very remarkable Ordinance made in the 8th of Edward I. recites that the People who came to Parliament were often " delayed and disturbed to the great grievance of them, and of the court, by the multitude of Petitions laid before the King, the greatest part whereof might be dispatched by the *Chancellor*, and by the Justices; therefore it is provided that all the petitions which concern the seal, shall come first to the Chancellor; and those which touch the Exchequer, to the Exchequer; and those which concern the Justices, and the law of the land, to the Justices; and those which concern the Jews, to the Justices of the Jews; and if the affairs are so great, or if they are of Grace, that the Chancellor and others cannot do it without the King, then they shall bring them with their own hands before the King, to know his pleasure; so that no Petitions shall come

* An Essay concerning Parliaments at a certainty, or the Kalends of May, by Samuel Johnson, 4to. 1693.

“ before the King, and his Council, but by the hands
 “ of his said Chancellor, and other chief ministers ; so
 “ that the King and his Council may, without the load
 “ of other business, attend to the great business of his
 “ Realm, and of other foreign countries.”*

The Chancellor's office from this time received a considerable accession of power and dignity, according to the personal character and ambition of the succeeding Chancellors, and their respective influence with their Royal masters and the Barons. † The natural consequence of this crude and delegated system of jurisprudence was soon experienced in streams of injustice and a general malversation in office. So overwhelming did these evils become, that many ancient Parliaments were called for the specific object of legal reform. Such, says Prynn, ‡ were “ the ancient Parliaments of Marlbridge, Gloucester, West. 1, 2, (anno 50 H. 3. & 3, 6, 13 Ed. 1.) the scope of whose respective summonses, consultations, and laws, is thus notably expressed in their respective printed Prologues. ‘ For the great mischiefs and disherisons that the people of this realm of England, have hitherto suffered, thro’ default of the Law, that failed in divers cases, within the same realm, and that the People might have and obtain more speedy Justice in their sutes and oppressions than they had before ; our Sovereign Lord the King, for the amendment of the Lawes, for the

* Ryley's *Placita Parliamentaria*. p. 442.

† Ranulph de Neville, Bishop of Ely and Chancellor, refused to deliver up the Seal when Henry III. demanded it, the Bishop contending that he had received it from the Parliament. The King notwithstanding nominally deprived him of the office or title, but the contumacious ecclesiastic retained the more substantial part—the profits. *Matth. Westm. in an.* 1260, and *Matth. Paris*, 1236.

‡ Prynn's *Writs*, part 4. Epistle Dedicatory.

relief of his people, and to eschue such mischiefs, damages, and disherisons, and for the more speedy administration of Justice, as belongeth to the office of a King, hath called the most discreet men of the Realm together, as well of the higher, as of the Lower Estate,'” &c.

The same industrious antiquary then declares the redress of judicial abuses to be the very first duty and power of *Parliament*—“ the fountain from whence all Lawes and Statutes for the speedy execution and distribution of common right, justice, to all and every subject, high or low, rich or poor, bond or free, without obstruction, denial, suspension or delay originally flow : the remover, corrector of all corruptions, abuses, remoraes which hinder, retard, elude, prevent, pervert, and supplier of all defects, remedies, helps, which may promote and accelerate the free course and progress of Law and Public Justice.” *

The charters, parliament rolls, and prologues to the various early statutes, confirm these facts without any further quotations.

It is a singular and interesting proof of the sagacity of our ancestors, that in order to insure simplicity and integrity in the construction of their laws, and the disinterested performance of parliamentary duties, practising Lawyers, were, by repeated acts and ordinances disqualified from sitting in the House of Commons.†

* Idem, p. 695. This extraordinary character, not inaptly styled “ a voluminous zealot,” although a Bencher of Lincoln’s Inn, declares his object “ to suppress the supernumerary multitudes of dishonest ignorant vexatious Attorneys, Solicitors, Apparitors, Pettifoggers, Barreters, Projectors swarming in all parts of the realm, to the People’s great oppression.” Epist. Ded.

† See Ordinance. Rot. Parl. an. 46 Edward iii. n. 13.—Fryne’s Preface to Cotton’s Abridgment, and Coke, 4 iust.

This prohibition was often inserted in the writ of summons.* Prynne, with his usual zeal against law-craft, elaborately argues the propriety of their exclusion, which he asserts shortened the duration of the Sessions, facilitated business, simplified much the verbiage of acts of Parliament, and had the effect “ of restoring laws to their primitive Saxon simplicity, and making them short, like God’s commandments.” (*Writs. part 4. p. 619, and pref. to Cotton’s Abridgment.*)

It is remarkable also that the Lawyers were the first class of society expressly excluded from sitting in the House of Commons, and it is conjectured that the words *gladiis cinctos*, introduced into the writs of summons in the reign of Edward III. circa 1352, were originally devised to effect their exclusion. It was thought that they got into Parliament as a goodly opportunity of making their court to the minister, and for the emolument of the attendance. The Country Gentlemen at that period were no less disinclined by the expence, than disgusted at the mal-administration of Roger Mortimer. The Lawyers abounded in the house: —“ four shillings a day, the constant wages of a knight of the shire, though more than ten times that sum in our days, was not a sufficient equivalent for the trouble and inconveniences, which a gentleman of the first distinction in his county must undergo by removing to London; nor indeed was it worth his attention: but it was a very considerable advantage to a Lawyer, whose business called him thither in term time; the terms

* A Writ of Summons, Anno 5. H. iv. dated at Lichfield, for a Parliament to be held apud Coventre, excluded Sheriffs and Lawyers—“ *Nolumus autem quod tu, nec aliquis alius vicecomes Regni nostri, nec Apprentitius, vel aliquis alius homo ad legem aliqualliter sit electus.*”

being in those days the usual times of Parliaments sitting." *

The Sheriffs of the different counties were enjoined to return the best qualified and most considerable knights of the shires, and not "tricking fellows and maintainers of false suits." But as a still more efficient obstacle to their intrusion in Parliament, it was enacted that no Lawyers in the House of Commons should thenceforth have any wages. Coke, (Inst. iv. fol. 10 and 48) is extremely wrath against this exclusion; and with much special pleading labours to prove that they were excluded by *ordinance* and not by *statute*. The interdiction however was recorded on the Parliament rolls, in a petition from the Commons with the king's answer, and Carte considered it still binding! Coke, confined himself to the above technical objection, and does not argue that any benefits had accrued from the exercise of their legislative functions: Carte very justly says, "could" [the reverse of] "this be shewn, people would not despair, as too many do, of seeing any reformation made in the law of this kingdom, whilst such a number of the profession sit in Parliament: it is a thing extremely wanted; and

* Carte. vol. iii. 480 —The same able historian writes—"Whether it was the ever open hand of a practising lawyer, always ready to grasp a fee, or the extravagant deference paid to that fee; as if a motive, sordid in its nature, could so hallow a cause of cursed iniquity, as to render it fit for any man to prostitute his tongue in its behalf, and to employ what talents he has (either in argumentation, eloquence, skill in the quirks of the law, or in out-facing truth itself) to pervert justice, to impose on the minds of jurors, and influence them to an unjust verdict; or whether a strong bias, habitual disposition, and fruitful genius, in too many, for turning every trust and situation in life to their own private advantage, were the reasons why one of the wisest of our kings, with his council composed of great men, and parliaments themselves, thought it necessary to incapacitate, practising lawyers from sitting in the house of commons, it is certain they were the first set of men expressly excluded."—*Id.* p. 480.

nothing but an inordinate love of gain, or a shameful indolence and disregard of the public good, can restrain men from endeavouring to be as useful to the world, as they are enabled to be by their respective talents."—p. 483.

These singular historical facts are not immediately connected with the subject of the present chapter, but are only introduced chronologically, and as part of the history of our corrective jurisprudence. The future pages of this volume will shew whether seats in the English Parliament have not been long regarded and used by British Lawyers as the stepping-stones to legal preferment: whether political apostacy has not been purchased by crown offices, chancery masterships, *et cetera*; whether those who from their study of the English liberties understood them best, using that knowledge as the passport to power, have not betrayed the cause of freedom; in short whether the reform of the law has not been retarded and prevented for centuries past by the efforts of Parliamentary Lawyers whose sinister interests were thriving on its abuses—

—“ Loud and upright, till their price be known,
They thwart the King's supplies to raise their own.”

But, to return from this digression to the history of equitable jurisdiction. Lambard supposes that when the Courts of Chancery and King's Bench, ceased to be ambulatory about the 4th Edward III., that the King delegated to the Chancellor with the great seal his pre-eminence of jurisdiction, in civil causes, as well for amendment, as for aid of the common law; but that the origin of Equity may be more properly dated from the introduction of *Uses* in the reign of Henry IV.*

* Archion 62.

Many learned antiquarian lawyers place its origin much earlier. The controversy is however no way important to the present inquiry. *

The reign of Edward III. may certainly be considered as the period when the Chancery first became an important *judicial* office.—By various statutes during this period† the Chancellor had power to judge the neglects of execution of the Statutes of Wines and Victuals, and to determine matters of controversy between parties in cases depending before the Parliament; also in some questions relating to the King's revenue: in cases of Tythe, Patent, Wardship, and Dower. By the 17th of Richard II. c. 6, he first obtained a discretionary power of awarding damages.

A most important record in the 22nd Edward III. affords direct and perhaps the earliest documentary evidence of the commencement of the Chancellor's jurisdiction in equity. It is a writ or proclamation thus translated, from the original words of the Roll. ‡

“The King to the sheriffs of London greeting.—

* For most of the learning on this subject the reader is referred to “*A Discourse of the Judicial Authority belonging to the office of the Master of the Rolls, London oct. 1727*,” ascribed to Lord Hardwicke. “*The legal Judicature in Chancery stated, with remarks on a late book entitled, A Discourse of the Judicial authority, &c. oct. 1727*,” said to be written by Mr. Burroughs—And to “*A Preface to the Discourse, &c. an answer, &c. to the Legal Judicature in Chancery stated. oct. 1728*” Also to several tracts in the *Collectanea Juridica*, and in Hearne's *Curious Discourses*. The date of the first bills in Chancery now remaining on record, is said to be about 1394. 16 Richard II. Some valuable collections and reports however of Chancery proceedings are expected from the research and labours of the Record Commissioners.

† 4 Edw. III. c. 12 — 9. c. 1 — 14. c. 5 — 27. c. 26. — 36. c. 9 and 13. — 37 c. 17 — 38. c. 9

‡ “*† Rex vicecomit' London salutem. Quia circa diversa negotia nos et statum regni nostri Angl. concernentia sumus indies multipliciter occu-*

" Forasmuch as we are greatly and daily busied in va-
 " rious affairs concerning us and the state of our realm
 " of *England*: We will, That whatsoever business, re-
 " lating as well to the *common law* of our *kingdom*, as
 " our *special grace* cognizable before us, from hence-
 " forth be prosecuted as followeth, viz. The *common*
 " *law business*, before the Archbishop of *Canterbury*
 " elect, our *Chancellor*, by him to be dispatched; and
 " the other matters grantable by our *special grace*, be
 " prosecuted before our said *Chancellor*, or our *well*
 " *beloved Clerk, the keeper of the Privy seal*, so that
 " *they, or one of them*, transmit to us such petitions of
 " business, which without consulting us they cannot
 " determine, together with their advice thereupon, with-
 " out any further prosecution to be had before us for
 " the same; that upon inspection thereof, we may further
 " signify to the aforesaid Chancellor or Keeper, our
 " will and pleasure therein; and that none other do for
 " the future pursue such kind of business before us, *we*

" pati, volumus quod qualibet negotia tam communem legem regni nostri
 " Angl. quam gratiam nostram specialem concernentia penes nosmetipsos
 " habens exnunc prosequend' eadem negotia, videlicet. negotia ad commu-
 " nem legem penes venerab' virum elect' Cantuar' confirmat' Cancellarium
 " nostrum per ipsum expediend. Et alia negotia de gratia nostra conce-
 " denda penes eundem cancellarium seu dilectum clericum nostrum Custodi
 " dem sigilli nostri privati prosequantur. Ita quod ipsi vel unus eorum peti-
 " tiones, negotiorum quæ per eos nobis inconsultis expediri non poterunt,
 " una cum advisamentis suis inde ad nos transmittant vel transmittat,
 " absque alia prosecutione penes nos inde faciend' ut his inspectis ulterius
 " præfato Cancellario, seu Custodi inde significemus velle nostrum, et
 " quod nullus alius hujusmodi negotia penes nosmetipsos de cætero prose-
 " quantur, vobis præcipimus quod statim visis præsentibus præmissa
 " omnia et singula in civitate prædicta in locis ubi expediri videritis
 " publice proclamari, faciatis in forma prædicta, et hoc nullatenus
 " omittatis. Teste Rege apud Langley 13. die Januarij, Anno regni sui
 " 22 E. 3. Claus. p. 2. m. 2. in dorso per ipsum Regem."

"command you immediately, upon sight hereof, to make proclamation of the premises," &c.

The constant and bold attempt of the Commons to restrain this novel jurisdiction during its infancy, will be briefly shewn by collecting and extracting from Prynne's Cotton's Abridgment of Records, (fol. 1679) the repeated parliamentary petitions, with the royal answers.

8 Edward 3.—That all men may have their Writs out of the Chancery for only the fees of the Seal, without any Fine, according to the great Charter, *Nulli vendemus justiciam*.

Resp.—Such as be of course shall be so, and such as be of grace the King will command the Chancellor to be therein gracious.—p. 15.

15 Edward 3.—It was an article of the Commons, "That the Chancellor and all other officers there named, may be chosen in open Parliament; they also there openly sworne to observe the laws as aforesaid."—p. 32.

Resp.—The King liketh, that if any such officer dyeth, or otherwise shall fall void, that in the choice of a new officer he shall have the assent of the Nobles; and that such officer shall be sworne at the next Parliament, according to the Petition.—p. 34.

17 Edward 3.—"That the Chancellor and Treasurer may be Peers of the realm, and no stranger appointed thereunto, neither that they attend any other office."

To this the King appears to have pleaded his *prerogative*.

Resp.—"The King will appoint such officers as shall best like him."—p. 39.

In this Parliament it was enacted "That the Laws of the Realm be free, and denied to no man; the which are now so dear, as now no man can well follow them."
—p. 41.

21 Edward 3.—Among the Petitions and Answers in this Parliament is recorded as follows—"Whereas the King hath ordained two Great Seals for sealing of Judicial Writs in the Common Pleas and K. B.: for every which judicial Writs the Commons pay seven-pence, and for the originals six-pence; That he will ordain a Small Seal for Judicial Writs, so as men may pay but 3 pence for a seal, to the great ease of the People; and then will more Writs be purchased to the King's great advantage: For now the Suit is so hard and dear, that the mean sort are not able to pursue their rights.

Resp.—Unto poor men shall be given for God's sake; and it is reason that such as are able, do pay as in former times hath been used."—p. 60.

21 Edward 3.—Whereas Judgment in divers places hath long depended and not given for difficulty of Law, that the King will ordain, That Judgment may be given without longer stay.

Resp.—The Justices before whom such Pleas are hanging, shall give judgment as soon as well they may; and if they cannot so do, then the tenor of such Record, and the process of such Pleas shall come into the Parliament, and there shall be determined, according to the ordinance made in their behalf.—p. 63.

25 Edward 3.—That no fine be paid for Writs out of the Chancery.

Resp.—The Chancellor shall therein respect the state of the Person.—p. 80.

28 Edward 3.—That the Writs of the Chancery may be at reasonable prices, and that the Clerks of the Crown, and others for Commissions, and such like do content themselves with the King's allowance.

Resp.—As heretofore the same shall be.—p. 88.

38 Edward 3.—That the Fines of the Chancery may be as they were at the Coronation of the King.

Resp.—The King would them to be reasonable for the case of the People.—p. 101.

45 Edward 3.—That there be no fines for any Writs of the Chancery.

Resp.—The Chancellor shall consider the state of the Person.—p. 112.

51 Edward 3.—That no fines be taken for any Writs according to the Great Charter *Nulli vendemus, &c.*

Resp.—Let it be according to the discretion of the Chancellor as it hath been.—p. 149.

1 Richard 2.—The Commons Petitioned that the Chancellor and other Officers might be chosen by the Lords in Parliament and Privy Council during the King's Minority.—p. 159.

In the 3rd year of the reign of the same monarch the Commons again sought to narrow the widening breaches made in the common law by the new jurisdiction of the Chancery and the Council.

ALSO the Commons pray, that no Writ issuing out of

the Chancery, Letter of the Privy Seal, or secret, be directed to any one to cause him to come before the Council of the King, or any other, to answer for his frank tenement or things appurtenant thereto, as hath been heretofore ordained, but that the Common Law of the land be maintained to have its due course.

ANSWER.—IT does not seem reasonable that our Lord the King should be restrained, that he be not able for reasonable cause to send for his liege subjects, but those who shall be sent before the Council at their coming, shall not be compelled by me to answer finally for their frank tenement, but as they would be elsewhere compelled in manner as the Law demands and the case requires, and put in due course. Provided always, that at the suit of a party where the King and his Council would be credibly informed as to maintenances, oppressions, and other outrages, in places where the Common Law is not able duly to have its course, in such case the Council may be able to send for the person of whom the Complaint is made for his surety to answer for his misprision. And further, at their good discretion, to compel him to find surety by Oath, and in other manner as shall seem best to be done for his good behaviour, and that he will not by himself or any other cause, maintenance or other thing, disturb the course of the Common Law, to the oppression of the people.*

5 Richard 2.—In the “devices of the Commons exhibited in a Schedule” they petition “That the most wise and able man in the realm may be chosen Chancellor, and that he seek to redress the enormities of the Chancery. p. 197. “Whereupon certain of the Chief Clerks of the Chancery, certain Justices, Barons of the Exchequer, and others learned in the Law, were appointed to

* Rot. Par. 3 Ric. ii. n. 49. vol. iii. p. 44.

consult thereon, and to present to the Lords their devises." " All which made report accordingly to the Lords and Commons ; whereof remedy was provided in part, &c." *

In the 13th Richard II. the Commons renewed their remonstrances against the inroad of the Council on the Common Law, but were met by the opposition of *prerogative*.

ALSO the Commons pray, that at the suit of the Party, nor on suggestion, none of the liege Subjects of the King be made to come by writ of Certiorari, nor by any other such Writ, before the Chancellor, or the Council of the King, to answer for any matter where a remedy is given by the Common Law, unless it be by Writ of Scire facias, in the County where it is found by the Common Law, or otherwise by Statute, upon penalty, on the Chancellor, of One hundred pounds, to be levied to the use of the King, and the Clerk who shall write the Writ, be deprived of his Office in the Chancery, and thenceforth be ineligible to any Office in the Chancery aforesaid.

ANSWER.—THE KING will preserve his Royalty as his Progenitors have done before him.†

Having in vain endeavoured to resist the introduction and establishment of the jurisdiction of the Council, the Commons henceforth directed their efforts towards its better regulation.

In the 17th Richard II. The Commons petition—

ASLO the Commons Pray, that inasmuch as many liege Subjects of the Kingdom, by untrue suggestions made, as well to the Council of our Lord the King, as in the Chancery

* Cotton's Abridgment, p. 197.

† Rot. Par. 13 Ric. ii. n. 33. vol. iii. p. 267.

of our Lord the King, are enjoined to appear before the said Council, or in the Chancery, upon a certain penalty, upon a certain day, by which the loyal subjects of the Kingdom are unjustly harassed and aggrieved to the great damage of your said liege subjects, and to the utter destruction of their estate, without remedy in the mean time to be had for their damages and cost—That you please to ordain and establish in this present Parliament, that the Chancellor of England for the time being, shall have full power to cause the parties complaining, in such Writs, under a certain penalty, to find sufficient pledge and surety to make satisfaction to the Party Defendant in case the suggestion be not true. And that the said Chancellor shall have full power to assess and tax the Costs and Damages so coming to the party Defendant, from the party Plaintiff, and shall cause execution for the false suggestion aforesaid. Provided always that no frank teneement or other Action whatsoever, which may be tried by the Common Law, shall be tried or brought into the Chancery aforesaid, nor elsewhere, but before the Justices of the King, as hath been heretofore accustomed.

ANSWER.—THE KING wills that the Chancellor for the time being shall have power to ordain and award damages according to his discretion.*

To enumerate the Chancellors in the reigns of Edward III. and Richard II. would be scarcely more relevant than extracting the “index of persons” in the Newgate Calendar.† There were many who “made

* Rot. Par. 17 Ric. ii n. 52. vol. iii. p. 323.

† They had, however, their Poet Laureats. The following verses to William de Longchampe, Bishop of Ely, Chancellor to Richard I., (A.D. 1189) were written by Nigel de Wetekre—

*Quæsitus regni tibi Cancellarius Angli,
Primus solliciti mente petendus erit.
Hic est, qui regni leges cancellat iniquas,
Et mandata pii principis æqua facit.*

the sceptre stoop, by stirring up envy in the nobility, and indignation from the people.”—It appears from Matthew Paris, the Mirror of Justices, and several ancient writers, that both the Chancellor and other great officers of state were originally appointed by the Parliament.* Bacon’s Selden says—“ it seems but reasonable that the Chancellor should hold his place by public election, as well as the Grand Justicier (whose plumes he borrowed) and other grand officers of state did before him : for he that will have his servant to work for another, must give the other that honour of electing him thereto ; nor was this laid aside in these times, but a claim was put in for the election of this principal officer amongst others.”

Such was the constitutional but unsuccessful opposition of the Commons in the reigns of Edward III. and Richard II. to the progress of this extraordinary jurisdiction. Common-sense however did succeed in the partial abolition of the Norman law-language. The Statute 36 Edward III. c. 15. A. D. 1362, enacted that in future all pleas should be “ pleaded, shewed, defended, answered, debated, and judged, in the English tongue :” the lawyers, always on the alert, appended a *proviso* that they should be “ entered and enrolled” in Latin, and the old customary terms and forms retained. The People therefore were little the wiser, and but in a slight degree emancipated by this statute : indeed the only difference was, that whereas formerly they could not see the legal fetters which bound them, they now saw them without being able to free themselves ! The Reporters still continued their notes in the law French, with the additional obscurity of the gothic black letter. Coke, ever the

* 15 Edw. iii. n. 10. 15.—15 Edw. iii. c. 3.—10 Rich. ii. n. 16. 10.

apologist of his brethren, gives a curious and sentimental reason, in his reports, volume iii., why the reports and statutes were preserved in the foreign jargon by Edward III. viz. lest by the publication of them in the vulgar tongue, the unlearned might be subject to errors, and trusting to their own conceits endanger themselves ! Thus, though the King and Legislature declare by the statute 36 Edward III. c. xv. that the people have been greatly inconvenienced by the " laws, customs, and statutes" of the realm being in a foreign language, the lawyers assent to the adoption of the vernacular tongue as the medium of *that* future legislative communication and of the interlocutory process, but object to judicial *decisions* being englished lest a contrary effect should result ! Perhaps, however, Coke ironically insinuates, in this reasoning, that the contradiction and injustice of the decisions would only mystify the understandings of the common-people, who in those unlettered times possessed nothing but common-sense wherewith to explore the labyrinths of the national law.

CHAPTER IV.

OF THE COURT OF CHANCERY, DURING THE REIGNS OF
HENRY IV., V., AND VI.

IT often befalls in State-affairs, that extraordinary exigencies require extraordinary remedies, which having once gotten footing, are not easily laid aside, especially if they be expedient for Prerogative. The Privy Councell in the Star-chamber, pretending default of the Common Law, both in speed, and severity, in cases whereby the state is indangered: The Chancery pretends default by the Common Law in point of equity and moderation: The People taken with these pretences, make that rod more heavy, which themselves had already complained of: What the Chancery was in times past hath been already shewn; still it is in the growing and gaining hand. In a word, the Chancellor is become the kingdome's darling, and might be more bold with the Common Law, then any of his Peeres!—*Nath. Bacon. Historical Discourse. Continuation. chapter xviii. of the Court of Chancery circa Hen. 4, 5, 6.*

IN the first year of the reign of the new monarch, the Commons renewed their opposition to the encroachments and oppressions of the Council.

ALSO the Commons pray that whereas in the time of the late King Richard the usage hath been that many personal actions between party and party, which might be well determined by the Common Law of England, by maintenance of those who have been of the Council of the said late King Richard, by procurement to them made, have caused to come

before them many of the liege Subjects of the Lord the King, by Letters of the Privy Seal, at the Suit of the party, there to be tried before their enemies, of personal Action determinable by the Common Law of England, whereof many actions are yet pending in discussion by maintenance of those who were adjudged at Bristol for evil Councillors, to the great damage of the said liege subjects of our said Lord the King, and in derogation of the Crown, and to the destruction of the Common Law. May it please our most invincible Lord the King, by the advice of his most wise Council, to ordain in this present Parliament, that all manner of personal Actions between party and party, where the King is not party, the same as heretofore, shall be tried by the Common Law, and nowise before the Council of our Lord the King, by any Writ of Privy Seal, or by any other false suggestion whatsoever, at the suit of the party. And that all personal actions, so in times past depending, before the Council of Richard, late King, between party and party, and yet to be discussed, shall be annulled and adjourned to the Common Law for God and in the work of Charity.

ANSWER.—LET the Statute thereupon made be observed and kept, except the one party be great and rich, and the other party poor, and not able otherwise to have remedy.*

By statute 4, Henry IV. c. 8. the Chancery acquired a judicatory power in relation to the Exchequer Commissions. This jurisdiction, it is believed, was readily conceded to the Chancery, as men were unwilling to embroil themselves with friends and neighbours, or to become the instruments of violent contentions between the monarch and nobility.

In the 8th of Henry IV. a bold and honest Parliament appears to have investigated the grievances of the nation,

* Rot. Par. 1 Henry iv. n. 162. vol. iii p. 446.

particularly the encroachments of the regal prerogative on the Courts of Law, and the judicial delays. The Commons presented 31 articles for the Royal assent. The Chancellor and Privy Seal were to pass no grants, &c contrary to law. The king was to assign two days a week for Petitions, "it being an honorable and necessary thing that his lieges who desired to petition him should be heard." The Council to determine nothing cognizable at Common Law, unless for a reasonable cause and with consent of the Judges. The Council and Officers of State were sworn to observe the common law and statutes, with several other wholesome enactments. *

In the 4th Henry IV. A. D. 1402, the Chancery invaded the Ecclesiastical courts. Children had been decoyed from their parents by the Monks and Friars into religious houses, and the canon law affording no remedy, a statute was made † by virtue of which the Chancellor on complaint and proof of such abduction was empowered to send for the superiors and punish them according to his discretion.

A ministerial power was also given to the Chancellor by statute 4, Hen. IV. c. 8. of granting a special assize to persons aggrieved by false entry on lands, or false possession of goods thereon. Also to compel appearance in cases of riot, robbery by servants, and other common offences. ‡

In the 3rd Hen. V. A. D. 1415, we learn that John of Waltham was the inventor of the writ of subpœna, from a Petition which protests against the process. As a remedy the Commons pray that the cause of action

* Rot. Par. 8 Hen. iv. p. 585.

† 4 Hen. iv. c. 17.

‡ 13. Hen. iv. c. 7.—2 Hen. v. c. 9.

Defendant therein, without being returned into your Exchequer, and in like manner to declare concerning Writs called Subpena and Certiorari. And in cases which after those who are made to come into your Exchequer, by force of such Writs, may be sufficiently excused, acquitted, or discharged, of the suggestions and matters on them so surmized, upon such Writs, then they shall have an Action of debt for £40. against the said Suggestors and Informers, declaring against them upon the said Writs the cause of their action, by so much as the said suggestions or informations are of record not proved true. And if it may appear by the record to the Court, on such Writs, they shall be sued for the debt which the Plaintiffs in the said Writs were acquitted, excused, or discharged, of the matters and suggestions having been by them surmized, that then the said Informers and Suggestors shall be condemned to the Prosecutor of the said Writs of debt, in the said Sum of £40. And furthermore that as well the pain contained in such writs, as all the Process thereupon, shall be void and holden for nothing. And if any such Writs, called Subpena and Certiorari, and informations, shall be sued out of your said Courts, against this Ordinance, in time to come, that the said Writs, and all the proceedings depending thereupon, shall be wholly void and holden for nothing.

ANSWER.—THE KING will advise.*

In the following year another Petition is found in the Parliamentary Rolls.—

ALSO the said Commons pray in this present Parliament, that if any man shall Indorse his Bill or Petition by these words—" by authority of Parliament Let this Bill or Petition be sent to the Council of the King, or to the Chancellor of England, to execute and determine what is con-

* Rot. Par. 3. Hen. v. part. li. vol. iv. p. 84.

"tained therein," by which the said Bill or Petition be not by the Commons of the Parliament enquired into, affirmed, or assented unto, (which no one can indorse on any such Bill or Petition, without the assent and request of the Commons of Parliament) let him be sent to answer for disobeying the Laws of the Kingdom of England.

ANSWER.—BE advised by the King.*

In the 9th Henry V. the Commons again protested against the jurisdiction of the Council, independent of Parliament; but no statute was obtained, and the petition received the polite negative of "be advised by the King."

ALSO the Commons pray, that whereas it is contained in divers Statutes made in the time of the noble Progenitors of our Sovereign Lord the King, that no one of his liege Subjects shall be compelled to answer but by Original Writ and due process according to the Law of the Land, and so it is that divers of the liege Subjects of our said Sovereign Lord are caused to come before his Council and his Chancellor by Letters of the Privy Seal and Writs of Subpœna, contrary to the provisions and ordinances aforesaid, that no such Letters or Writs shall be granted henceforth. And if any such Letters or Writs shall be granted, and it may appear by the declaration of the Plaintiff that his Action is at the Common Law, that the Defendant be admitted to take exception to the jurisdiction of the Court, and to plead that the Plaintiff hath sufficient remedy for him at the Common Law in his Case, and such exception shall be allowed him and thereupon dismissed out of Court, and that if he so wishes, he may then quietly depart without other answer or appearance without damage. And that all such Letters and Writs now depending before the said Council or the Chan-

* Rot. Par. 8 Hen. v. vol. iv. p. 127. No. 23.

cellor, shall be void and holden for nothing: And these against whom such Letters and Writs are prosecuted, shall be dismissed out of the Courts aforesaid by authority of this present Parliament, except those which are in the Courts aforesaid by authority of Parliament, and this for God and in the work of Charity.

ANSWER.—LET them be advised by the King: And all these aforesaid ordinances shall endure until the next Parliament to be holden. *

9 Henry V.—That the exception, how that the Partie hath sufficient remedy at the Common Law, shall discharge any matter in the Chancery.

Resp.—It is enacted to endure until the next Parliament.—*Cotton's Abridgm.* p. 571.

All these nervous and repeated remonstrances strikingly exhibit the great importance attached to the suppression, or certainly to the control, of the extraordinary jurisdiction assumed by the Council. The constant object of the Commons was to establish the supremacy or ascendancy of the Courts of Common Law over the Council and the Chancery; to lodge, as it were, the key of Equity in the hands of the ancient law.—Thus in the first year of the reign and minority of Henry VI., they recommenced the attack in the following petition, which met the usual courteous but evasive reply:—

IN the first place the Commons pray that it may be ordained by Statute in this Parliament that no Man or Woman of the liege subjects of our Lord the King, from this day forward, be sent, compelled, or bound, to answer in the Council or the Chancery of our said Lord the King, or elsewhere, at the suit or Complaint of any person, for any matter of which

* Rot. Par. 9 Hen. v. n. 26. vol. iv. p. 156.

remedy or action is provided or given by the Common Law, nor by any writ or Letter of the Privy seal, called a writ or Letter of Subpena, of our said Lord the King or of his heirs in future, nor shall in any wise appear in the said Council, Chancery, or elsewhere, to the complaint or suggestion of any one before the Complainant shall send one Bill containing all the matter of his Plaint and grievance, which Bill shall be especially examined and approved by two of the Justices of the King of the one Bench or the other, that the Complainant concerning the matter and grievances in the said Bill contained, cannot have action or remedy by the Common Law aforesaid in any manner. And that the said Bill after the said examination shall be indented, and that one part thereof shall remain with the said two Justices, and the other part shall remain in the Council, or in the Chancery, or elsewhere, where the Party adverse and Defendant ought to appear by the Writs or Letters aforesaid. And that the Party Complainant appear in his proper person on every day which the Parties shall be in the said Council, Chancery, or elsewhere, pending the matter of the Complaint and Grievance aforesaid, until the same shall be fully discussed and determined without imparlance therein in any manner, if it be not that the Defendant be allowed to imparle in the same suit. And that the said Party Complainant shall proceed against the said Party adverse and Defendant, upon the said Bill indented and upon none other, on pain of £20. to be by him lost and forfeited, that is to say, one moiety to be paid to our said Lord the King or to his heirs, and the other moiety to the said party adverse and Defendant, who by the said Writs or letters shall be made to come or appear as is aforesaid. And that the Party Complainant shall find sufficient surety by recognizance, to be thereupon made in the said Council, Chancery, or elsewhere, to the said Party adverse and Defendant, commanded to appear by the Writs or Letters aforesaid, to appear and plead upon the said Bill,

indented in the manner and form aforesaid. And that the said Chancellor and others having the chief governance aforesaid, each in his place shall have power by this Statute to award and adjudge damages to the said party, adverse and Defendant, for his costs, labour, and vexation, if the party Complainant do not prove his suit to be true. And shall cause execution to be made by Writs or by Letters of the Privy Seal as a matter adjudged of record to the use and profit of the said party adverse and Defendant. And this as well for the said £10. so forfeited as the damages so adjudged and awarded. And that the names of the said two Justices who had the examination of the said Bill shall be expressed at the end of the said Writs or Letters. And if any such Writ or Letter of the Privy Seal shall issue in times to come to the contrary, they shall be in all things void and of none effect.

ANSWER.—LET the Statute thereupon made in the 17th year of the reign of King Richard the second be observed and put in due execution.*

During the minority of Henry VI., numerous complaints were made by the Commons, that the King's subjects underwent arbitrary imprisonment, and were vexed by summonses before the council, and by the newly invented writ of subpœna out of Chancery.† In the second year of his reign, it is noted in Cotton's Abridgment, "That no man be bound to answer in the Chancery for any matter determinable at the Common Law, on pain to the Plaintiff to lose £20. *Resp.* The Statutes in this behalf in the 17th Richard II. shall be executed. p. 566." By the same collection of records it appears that the Chancellorship was then elective, or

* Rot. Parl. 1 Hen. vi. n. 41.

† Rot. Par. 3 Hen. vi. p. 292. - 8 Hen. vi. p. 343.

in some degree under popular control; for the abridgment says, 4 Henry IV. A. D. 1426, "the thirteenth day of March, the Bishop of Winchester, for sundry causes, prayeth to be discharged of the great seal, whereof by common consent he was discharged.—p. 584."

In this reign the Chancery gained on the Admiralty jurisdiction. The alarming increase of piracies gave rise to the statute of 2 Henry IV. c. 6. which appointed and stationed at the principal ports Conservators of the Truce, with power to take cognizance of and punish certain offences committed in the ports and on the high seas. The intended remedy however proved inadequate; by subsequent penal statutes the Chancery (calling to its assistance certain of the judges) was invested with the authority of proceeding against the offenders; and a *remedial* statute, 31 Henry VI. c. 4, gave the Chancellor and Judges power to award restitution and reparation to the parties wronged, and to issue execution to enforce their decrees.

The civil wars also between the houses of York and Lancaster gave rise to an additional jurisdiction in the Chancery. Single women of property had been carried away to the castles and fortresses by the contending parties, and there illegally induced to surrender their estates and goods, and often to enter into compulsory marriages. By the statute 31 Henry VI. c. 9, the Chancellor was authorized to hear and determine all such complaints.

"Thus," says Bacon's Selden, "as the work and power of the Chancery grew, so did the place and power of the Chancellor grow more considerable; raised now from being the King's Secretary (for no better was he in former times) to be the Kingdom's Judge; and of

such trust that although the King might make election of his own secretary, yet the Parliament would first know and allow him that must be trusted with the power over the estates of so many of the people; and therefore in these times both place and displace him as they saw expedient.—In a word, he is become the kingdom's darling,* and might be more bold with the Common Law than any of his Peers."

During the whole of this period it is scarcely possible to define the relative powers and duties of the Council and the Chancery. The relation of the *Consilium Regis* to, or its conjunction with, the Court of Chancery, is one of the most doubtful points of English History; and involves the still more doubtful origin of the judicial power and appellate jurisdiction of the House of Lords. On this subject however the reader is referred to *Hale's Treatise on the Jurisdiction of Parliament*, with Hargrave's introductory preface.†

In some cases the Chancellor was the ordinary judge, assisted by the advice of the *Consilium Regis* as co-assessors, hence many of the chancery proceedings were styled *coram consilio domini regis in cancellariâ*, and *coram consilio*. The equitable jurisdiction of the Court appears therefore to have originated in certain petitions in Parliament being committed to the determination of the Chancellor, whose official duties were subsequently much increased by the invention of *Uses*, the civil dissensions of the kingdom, and the personal character and ambition of the successive chancellors. The three estates of the realm alternately sought to exercise or control the administration of equity: the King claimed it for his prerogative, the Nobility for the Council, and

* The King's darling, as it ought to have been expressed.

† 4to. 1796.

the Commons asserted a right of subjecting it to the common law. The "Court of Chancery" was the progeny of these contentions.*

* As circumstances favoured each party so they alternately prevailed. On the nomination of the Regency or Council during the minority of Henry VI. the "Lords of the King's Counsaile" introduced into Parliament a schedule of provisions for the "good gouvernance of the land," in which they stipulated for their own jurisdiction as follows:—

'Item, that alle the billes that shul be putt unto the Counsaill, shuld be onys in the weke att the lest, that is to seie, on the Wednesday, redd before ye Counsaill, and their ansueres endoced by the same Counsaill. And on Friday next folowyng declared to the partie sayng.

'Item, that alle the billes that comprehende materes terminable atte the commune lawe that semeth nocht senyd, be remmitted there to be determined; *but if so be that ye discrecion of the Counsaill feele to greet myght on that oo side, and unmyght oo that othir.*

'Item, that the Clerc of the Counsaill be sworn, that every day that the Counsaill sittith on ony billes bitwix partie and partie, that he shall, as fer as he can, *aspye which is the porest suytur's bille*, and that first to be redd ood answered, *and that the King's Serjeant to be sworne treuly and plainly to yeve the poor man, that for suche is accept to the Counsaill, assistence and trewe Counsaill in his matere, so to be suyd, withoute eny good takyng of hym, on payne of discharge of their offic.'*

CHAPTER V.

OF THE COURT OF CHANCERY,
FROM THE REIGN OF EDWARD IV., A. D. 1461, TO THE
ACCESSION OF JAMES I., A. D. 1603.

The Court of Equity increased most of all, when Cardinal Wolsey was Lord Chancellor of England, anno 8 Hen VIII, of whom the old saying was verified—That great men in judicial places will never want authority.—*Coke. Inst.* part 2. p. 553.

FROM the accession of Edward IV. to the Chancellorship of Wolsey, very few historical materials can be collected relative to the progress of the equitable jurisdiction of the court, and still fewer for the purposes of the present volume. The commissions and writs to the different Chancellors and Equity commissions, recorded in Rymer and other collections, are almost the only sources where we can correctly discover the practice and powers of the court.

In the 7th Edward IV., the Great Seal was delivered to Robert Kirkman,* Keeper of the Rolls, to seal “that all manere matters to be examined and discussed in the King’s Court of Chancery, should be directed and determined according to equity and conscience, and to the

* Rymer. Tom. ii 578.

old cours and laudable custome of the same court : so that if in any such matters any difficulty or question in the law happen to arise, that he therein take the advice and counsel of some of the King's Justices, so that right and justice may be duly administered to every man."

Edward IV. appointed five chancellors : Richard III. only two : Henry VII. three, all of them ecclesiastics. Previous to the latter reign it is said that there were not sixty causes in a year heard in the Court of Chancery. All these monarchs contributed the average quota of their predecessors to the Statute book.* An old Historian writes, that Henry VII. "went down to his grave with but a dry funeral; and though he died rich, yet he is since grown into debt to the penmen of his story, (Lord Bacon and Co.) that by their own excellency have rendered him a better King than he was." Yet Bacon fairly records that Henry VII. used to boast of governing England by his laws, and his laws by his Lawyers—a chicanery not confined to the Kings of the fifteenth century. The *judicial*, compared with the *political*, aptitude of Chancellors of this period was indeed but a secondary object: they represented not only the person but the mind of royalty.

Henry VIII. will scarcely be suspected of any very fastidious or disinterested selection of Equity judges. The pecuniary hoards of Henry VII. "much ill gotten was much ill spent;" and his profligate successor was wittily characterised as "wanting the main clause in the conveyance, *To have and to hold.*" The Reformation

* "There was also enacted that charitable Law, for the admission of poore suiters *in forma pauperis*, without fee to Councillor, Attorney, or Clerke, whereby poore men became rather able to *rexe*, than unable to *sue*. Lord Bacon's *History of Henry vii.* fol. 1622. p. 146.

was in no slight degree indebted to the cupidity of this King excited by the riches which used to flow to Rome. His *Pro-rex* and Chancellor Wolsey was excellently adapted to the purposes and wants of such a despot: "like master like man," says the old English proverb. The *Cardinal* had of course little time or inclination to attend to Chancery suitors. On the 11th of July, 1529, the day preceding an adjournment on the trial of Katharine's divorce, the first Special Commission for hearing causes in Chancery was granted. The Commission* was directed to the Master of the Rolls, four Judges, six Masters, and to ten other Commissioners, and recites that Wolsey was busied about the affairs of the *commonwealth*, and therefore in ease of him, and that justice might be done to the subjects, the King assigns the commissioners, or any four of them, two of whom were to be the Master of the Rolls, Judges or Masters, to hear, examine, and finally to determine all causes in Chancery committed to them by the Chancellor and to order execution thereon. As this commission was the precedent of all the subsequent delegations of the judicial authority of the Chancellor, the following translation is both interesting and important:

"The King to his beloved and faithful John Taylor, Clerk, Master and Keeper of the Rolls of our Chancery, &c.

Know ye, that whereas the most reverend Father in Christ, Thomas, by divine permission, Cardinal, Priest, &c. has been employed for the sake of the peace and tranquillity of our kingdom and subjects of England, and for the interest, profit, and utility of the public, in which post he constantly exists; and considering and piously compassionating the insupportable cares, labours, and fatigues, which he on that

* Rymer, tom. 14. p. 299.

account undergoes and suffers, and lest such singular fortitude of mind and body should be too much impaired, which God avert, through such fatigues, and he not able to attend in good health as usual to our most necessary affairs with his chiefest care: Being therefore willing, that justice should be administered to all and every of our subjects, and fully relying in your fidelity and circumspection, we have appointed you the aforesaid John Taylor, &c. by virtue of these presents, granting unto you power and authority to hear all and every the causes, disputes, and complaints whatever of our subjects depending before us in our chancery, or already moved or to be moved therein, and by the said Lord Chancellor committed to you, or any of you (but not to less than four however) and that for the future shall be committed to you from time to time, to be heard, examined, and scrutinized with due regard according to the allegations and proofs, and your own sound discretion to discuss and finally determine, and to command a full execution thereof. Therefore we command, that with regard to the premises you truly and diligently act and execute every thing with effect. By the tenor of these presents, We give it as a firm command to all and singular our officers, ministers, and subjects, whom it may concern, that in all and singular the premises they be intent and obedient in the execution thereof, as it becometh. In testimony whereof, &c.

Witness the King at Westminster, this eleventh Day of June."

Cardinal Wolsey received a very suitable education for the office of Chancellor in his previous appointment of reporter of proceedings in the Star Chamber; and his domestic biographer informs us, that in the performance of his star-chamber duties, "the King received so great content that he called him still nearer to his

person; and the rather because he was most ready to advance the king's own will and pleasure, having no respect to the case!" On receiving his patent as Chancellor, he appears to have commenced his judicial career with considerable activity, and caring little for the legality of his proceedings. Few particulars are known of his arbitrary and corrupt conduct when possessed of the seals; but the fact is beyond doubt that his decrees were greatly influenced and moderated by the *offerings* of the suitors. He generally presided in the Court of Chancery between the hours of eight and eleven, to hear suits and determine causes. It would appear from many of the old writers, that the suitors were numerous, and of low estate, and personally solicited justice. His biographer writes that in his progress to the hall he used "confections against pestilent airs, the which hee most commonly held to his nose, when he came to the presses, or when he was pestered with many suitors." The articles of his impeachment comprise several distinct charges of judicial corruption and illegal conduct in his office of Chancellor.* Dr. Fiddes

* Coke. Inst 4 —The following are among the articles—

20. Also the said Lord Cardinal hath examined divers and many matters in Chancery after judgement thereof given at the Common law, in subversion of your laws, and made some persons restore again to the other party condemned that, that they had in execution by vertue of the judgement of the Common law.

21. Also the said Lord Cardinal hath granted many Injunctions by Writ, and the parties never called thereunto, nor Bill put in against them; and by reason thereof, divers of your Subjects have been put from their lawful possession of their Lands and Tenements. And by such means he hath brought the more party of the suiters of this your Realm before himself, whereby he and divers of his servants have gotten much riches, and your Subjects suffered great wrongs.

26. Also when matters have been near at judgement by Process at your Common law, the same Lord Cardinal hath not onely given and sent Injunc-

has successfully vindicated him from many of the groundless imputations contained in these articles; the particular examination of which would not however exonerate the Cardinal from the charges of peculation and illegal exercise of judicial power. It is singular that an obsolete statute, revived to suit the occasion, was the unjust mode by which his jealous master, Henry VIII., accomplished the fall of the ex-favourite.

On the deposition of Wolsey, A. D. 1529, Henry VIII. appointed Sir Thomas More his successor, "that with that bayte," as Cardinal Pole says, "he might the more easily be brought to the bente of the king's bowe." But the probity of this celebrated lawyer was invincible. His biographer and grandson * gives an interesting account of More's installation in the office, and of the speech of the Duke of Norfolk, who introduced him to the people and the judgment seat. There was something extremely sagacious and prophetic in the Chancellor's reply: "I ascende this seate as a place full of labour and danger, voyd of all solide and true honour; the which by how much the higher it is, by so much greater fall, I am to feare, as well in respect of the verie

tions to the parties, but also sent for your Judges, and expressly by threats commanding them to defer the judgement, to the evident subversion of your Lawes, if the Judges would so have ceased.

31. Also at the Oier and Terminer at York, Proclamation was made that every man should put in their Bills for extortion of Ordinaries, and when divers Bills were put in against the Officers of the said Lord Cardinal of extortion, for taken twelve pence of the pound for probation of Testaments, whereof divers Bills were found before Justice Fitzherbert and other Commissioners, the said Lord Cardinal removed the said Indictments into the Chancery by Certiorari, and rebuked the said Fitzherbert for the same cause.

* Life of Sir Thomas More, Lord High Chancellor of England, &c. by his Grandson, Thomas More, Esq. ed. 1726.

nature of the thing itselfe, as because I am warned by this late fearefull example," &c. p. 162. Truly he described his "seate, as the sword to Damocles, which hung over his head, tyed only by a hayre of a horse's tale."—On his assuming the office his biographer states that a very singular change was soon apparent in the access to the new chancellor, as Wolsey would admit none into his presence, but those whose "fingers where tipped with golde." Sir Thomas More particularly sought the meaner suitor "and the more attentively he would hearken to his cause, and with speedy tryall dispatch him." For this purpose he commonly sate every afternoon in his open hall "so that if anie person whatsoever had anie sute unto him, he might more boldly come unto him, and there open to him, his complaints." We learn the following interesting particulars of the Chancery, during this period in the above mentioned biography.—

Now at his coming to this Office, he found the Court of Chancerie pestered and clogged with manie and tedious Causes, some having hung there almost twentie yeares. Wherefore to preuent the like, which was a great miserie for poore suiters, first * he caused *Mr. Crooke* chiefe of the Six Clarkes, to make a Dockett containing the whole number of all iniunctions, as either in his time had already passed, or at that time depended in anie of the king's Courts at *Westminster*. Then bidding all the Iudges to dinner, he in the presence of them all, shewed sufficient reason why he had made so manie Injunctions, that

* Mr Roper's Life of Sir Tho. More, p. 25. Hodgesdon's Hist. of Sir Tho. More, chap 9. p. 57. The reason of his having acted thus, proceeded from an informatioun, that several of the judges disliked the injunctions, which he had granted whilst he was Chancellor, and not from the causes assign'd by our Author, which seem foreign to the purpose.

they all confessed that they themselves in the like case would haue donne no lesse. Then he promised them besides, that if they themselves, to whome the reformation of the rigour of the law appertained would vpon reasonable consideracions in their owne discretion (as he thought in conscience they were bound) mitigate and reforme the rigour of the lawe, there should then from him no iniunctions be granted; to which when they refused to condescende, then, sayd he, for as much as yourselues, my Lords, driue me to this necessitie, you cannot hereafter blame me if I seeke to relieue the poore people's iniuries. After this he sayd to his sonne *Rooper* secretly, I perceiue, sonne, why they like not this; for they thinke that they may by a verdict of a iurie cast of all scruple from themselves vpon the poore iurie, which they account their chiefe defence. Wherefore I am constrayned to abide the aduenture of their blame.

He tooke great paines to heare causes at home, as is sayd, arbitrating matters for both the parties good; and lastly he tooke order with all the attorneys of his Courte, that there should no *sub penas* goe out, whereof in generall he should not haue notice of the matter, with one of their hands vnto the Bill; and if it did beare a sufficient cause of complaint, then would he set his hand to it, to haue it goe forward; if not, he would vtterly quash it, and denye a *sub pena*.*

This eminent judge was impervious to every sinister influence. He decreed "flattly" against his nearest relations in suits before him, saying to the connections who prayed his favour, "I assure thee on my fayth that if the parties will at my hands call for justice and equitie, then although it were my father, whome I reverence dearely, that stooode on the one side, and the diuell, whome I hate extreamely, were on the other side, his cause being just, the diuel of me should have his right."

* Hoddeston's Hist. of Sir Thomas More, cap. 9 p. 58.

He invariably refused and returned the numerous presents and "new year's gifts" by which the suitors sought to influence his judgments. It is recorded, that being presented by "one Mrs. Goaker" with a pair of gloves, and forty pounds of angels put into them, he said to her, "Mistresse, since it were against good manners to refuse your new year's gift, I am content to take your gloves, but as for the *lining* I utterly refuse it."* He was equally proof against royal manœuvres: it is written, that the King thought "that now he had so bound him unto him, that he could not have gainesayde him; but More valued more the quiet of his conscience, and justice, than anie Prince's favour in the world." The Chancellor therefore was altogether unfitted for the business he was intended to perform; it was consequently not surprising that he died on the scaffold, but though he lost his head he preserved his character, the reverse of the profligate king who murdered him. The celerity, steadfastness and integrity of More's decisions are proverbial.

Some days in term, such was his dispatch of business, that no cause was heard or motion made. And there cannot be a greater contrast than in the character of this great man, the first lay-chancellor, compared with that of his predecessors, than is expressed in the head of the 7th chapter in his biography, noting among "his especiall and remarkable virtues in midst of his honours, incredible poverty in so eminent a personage."

"When *More*, some years had Chancellor been,
No more suits did remain;
The same shall never more be seen,
Till *More* be there again."†

* Roper, p. 73.

† Fuller's Worthies.

The succeeding chancellors in this reign were more supple courtiers, and therefore better adapted to their situation and calling. No particular circumstances occurred during the two subsequent reigns of Edward VI. and Mary, worthy of narration. The English people were too busy in theological controversy, to spend much time or money in litigation. Some special commissions were appointed, delegating power to hear and determine suits, the substance of which may be seen in Rymer: they are generally the echo of that granted 21 Henry VIII. the translation of which has been already given. The early promise of Edward VI. was but too soon blighted in his premature death, but in the following speech it appears to have been the intention of the royal and hopeful youth to riddle the heaps of law: "I could wish that when time shall serve, the superfluous and tedious Statutes were brought into one sum together, and made more plain and short, to the intent that men might the better understand them; which they shall much help to advance the profit of the Commonwealth."

In the 1 Elizabeth, Dec. 22, A. D. 1559, Sir Nicholas Bacon, the father of the great Philosopher, was appointed *Lord Keeper*. He appears to have doubted the extent of his judicial authority; and in the April following procured a patent declaratory of as full powers as if he were *Lord Chancellor*, and ratifying all he had done in the character of Lord Keeper. This however was not altogether satisfactory, and four years afterwards an act of Parliament* was passed which declares "That the Common Law always was, that the Keeper of the Great Seal always had, as of right belonging to

* 5 Eliz. c. xviii. The statute recites "*whereas some question hath of late arisen,*" &c. whether the Lord Keeper could exercise the same power and jurisdiction as the Lord Chancellor, &c.

his office, the same authority, jurisdiction, execution of laws, and all other powers, as the Lord Chancellor of England lawfully used." Spelman* mentions that this act was passed to satisfy the scruples of Sir Nicholas Bacon, but the reason of those scruples is not recorded, and cannot be discovered. He is generally thought to have been moderate in his administration of equitable jurisdiction in the chancery, and to have respected the common law. Camden gives a high character of him—*Vir præpinguis, ingenio acerrimo, singulari prudentia, summa eloquentia, tenaci memoria, et sacris conciliis alterum columen.*† The latin inscription also on his monument in St. Paul's, ascribed to the celebrated George Buchanan, eulogizes his integrity and equity. He died in 1579, having been chancellor eighteen years in the service of Elizabeth, who knew the value of old servants.

By the Star-chamber proceedings against Mr. Wraynham, for slandering Lord Chancellor Bacon, 16 James I. A.D. 1618, it appears that in a suit, the *Countess of Southampton v. Sir Moyle Finch*, in which the Chancellor, Nicholas Bacon, decreed in favour of the Plaintiff. (Michas. 42 and 43 Eliz.) Sir Moyle Finch petitioned

* Spelm. Gloss. verbo Cancellarius.—Spelman does not scruple to say that it was thought grievous that the fortunes of all men should lie in the court of one man's breast. It is said that this learned legal antiquary stopped at the letter M in his *Glossary*, "A. D. 1626, because he had some things under *Magna Charta* and *Magnum Consilium*, that his friends were afraid might give offence." But be this as it may, the editor of the *Reliquiæ Spelmanianæ*, in the biography prefixed, candidly confesses, "in 1637 that was not a time to speak freely, either of the King's prerogative or the liberties of the subject, both which would fall in his way." What historical treasures have not been buried from similar motives? But the nation perhaps was happier that darkness was not visible.

† Annal p 333.

Queen Elizabeth that she would refer the examination of the decree to some of the Judges. The Queen referred it to two Judges, (but not to those Judges named in the petition,) who attended the Chancellor; and on their deciding against the equity judgment, the Chancellor reversed the decree.*

In the 9th Elizabeth, Easter Term, A. D. 1567, Sir James Dyer, a distinguished Chief Justice of the Common Pleas, in an inquest for the reformation of law abuses, honestly remarked—" You, officers, clerks, and attorneys summoned to be of this inquest: It is very expedient and necessary sometimes to have an eye to our officers and ministers, and to look upon this our court for the maintenance and preservation of its good order, course and ancient customs. I find divers records left to us by our ancestors that leads us thereto. The Judge that sees faults, and winking at them, does not correct them or punish them, by his sufferance provokes and stirs such malefactors to be faulty again, and to continue in their evil doings: therefore it was thought good by me and my brethren, at this time, to call you together."

On the death of Bromley, the successor of Sir Nicholas Bacon, the Queen created Sir Christopher Hatton her vice-chamberlain, Chancellor. He was not professionally educated for the office, but it is singular that none of the Historians notice the impropriety of the appointment. Camden does say it was disapproved by the lawyers, but that, "*splendissime omnium tamen quos vindimus se gessit, et quod ex juris scientiâ defuit, ex æquitate supplere studuit.*"† Spencer addressed a sonnet to the Chancellor, commendatory of his character

* State Trials. vol. vii p. 169.

† Camden's Elizabeth.

as a statesman. Mr. Ravenscroft asserts that the first reference to a Master in Chancery, was during the Chancellorship of Sir Christopher Hatton, and in consequence of this Chancellor's ignorance !

In the Lives of the Chancellors, it is stated that Sir Christopher Hatton " was first taken notice of by the Queen for the comeliness of his person, and his graceful dancing in a mask at Court," qualifications which doubtless made him particularly competent to the performance of his official duties as Chancellor. Sir Richard Swale, a civilian, is reported to have advised him in all his judicial business. The fickle conduct of the Queen is said to have broken the heart of this Chancellor, notwithstanding that her Majesty subsequently repenting her behaviour towards him " endeavoured all she could to recover him, and brought him cordials with her own hands." He died a bachelor, A. D. 1591.

The great seal, after being in commission some months, was delivered to Sir John Puckering, Sergeant at law. Of this Chancellor little is known : his *political* services gained him his high station. On his death, in 1596, the Queen delivered the great seal to Sir Thomas Egerton,* afterwards created a Peer by James I.

* A striking instance of Elizabeth's discernment and *political tact* is recorded relating to Sir Thomas Egerton—" that the Queen happening to be in court, while Mr. Egerton was pleading, in a cause against the crown, Her Majesty exclaimed, 'in my troth, he shall never plead against Me again : ' he was speedily appointed Queen's counsel and Solicitor General." An Anecdote somewhat similar was circulated, not many years since, of a certain modern Attorney General, thus *selected* by Government, in consequence of ability displayed in defence of parties arraigned for high treason. But the great legal acquirements and general accomplishments of the individual in question might have waited more patiently for the highest professional preferment, from which no political party could or can exclude him.

The reform of the law cannot be enumerated among the "glories" of this great Queen. Her blue-stock-ing-education does not appear to have comprised any legal learning or the study of the science of legis-lation. But the revision of the statutes is obscurely recommended in the preamble to stat. 5 Eliz. c. 4. And the following pertinent observations were delivered in her name to the two houses of Parliament, by Sir John Puckering, in the royal speech, 19th February, 1592.—
 "Her Majesty further hath willed me to signify unto
 "you, that the calling of this Parliament now, is not
 "for the making of any more new Laws and Statutes,
 "for there are already a sufficient number both of Eccle-
 "siastical and Temporal; and so many there be, that
 "rather than to burthen the subject with more to their
 "grievance, it were fitting an Abridgment were made of
 "those there are already. Wherefore it is her Majestie's
 "pleasure, that the time be not spent therein," &c.*

Lord Bacon, then Mr. Francis Bacon, echoed the same opinions, on a subsequent debate in the same Session.—"I did take great contentment in her Ma-
 "jesty's speeches the other day delivered by the Lord
 "Keeper, how that it was a thing not to be done sud-
 "denly nor at one Parliament, nor scarce a whole year
 "would suffice to purge the Statute Book and lessen
 "the volume of Laws, being so many in number, that
 "neither Common People can practice them, nor the
 "Lawyer sufficiently understand them: Than the which
 "nothing should tend more to the praise of her Ma-
 "jesty."†

By the same Journals, p. 553, we learn that in 1597, 39 Eliz.—"Sir Francis Hastings moved for the abridging

* Dewes' Journals, p. 458.

† Ibid. p. 473.

and reforming the excessive number of superfluous and burthensome penal Laws. Which motion being seconded by Mr. Francis Bacon, and others, the consideration of the managing thereof was committed unto all the Privy Council, being members of this House, all the Serjeants at Law being likewise Members of this House, all the Lawyers of this House, and others."

In the 43rd Eliz. A. D. 1601, Sir Edward Hobbie, in a parliamentary speech recommending the abridgment of the Penal Laws (which he described "as thorns that did prick but did yield no fruit,") remarked—"The pro-verb must needs be fulfilled, *Morum mutatio mutatio-nem legum requirit*. Times are not as they have been, "and therefore the necessity of time makes a necessity of "alteration of laws, with many other circumstances "touching the shortness of statutes, and recommending "the proceeding of former ages, he concluded with a "desire of a Committee." * This speech was seconded by Sergeant Harris, who stated that in the 27th year of Elizabeth's reign a similar motion had been made, in which nothing was done owing to the sudden dissolution of the parliament. It appears by Dewes' Journal, that a committee, the majority of whom were lawyers, had been appointed to prepare a bill: no further explanation is necessary respecting the failure of the measure.

These were high resolves, but nothing was *done* towards effecting objects so desirable; and Elizabeth, or her lawyers, added two hundred and seventy-eight Public Acts to the statute book! Her notions of prerogative, and the subserviency of her legal servants are eminently displayed in Sergeant Hale's declaration in the House of Commons—"that all we had was the Queen's, and

* Dewes. p. 22 — Townsend's Historical Collections, p. 180.

she might take it all when she pleased !” (Petyt MSS. vol. N. p. 8. B.) From Chaloner, who wrote in this reign, we may learn the doctrines of the lawyers of those times—

Demus enim (hoc hodie quoniam responsa tulerunt
Juridicum, cabalam arcanam qui in pectore servant)
Major ut ipsa suis sit legibus, atque superstat.*

The following chronological list of contemporary Reporters, alphabetically arranged in each reign, up to this period, and distinguishing the Chancery reports in italics, will singularly show the rapidly increasing number of the printed judicial decisions.

HENRY III. commencing 1216.

Jenkins, (Exchequer) 4, 19, 21.

EDWARD I.—1272.

Jenkins (Exchequer), 18, 34	| Year book (K. B. C. P. and Exchequer), part 1.
Keilwey (K. B. and C. P.), 6	

EDWARD II.—1307.

Jenkins (Exchequer), 5, 15,	| Year book (K. B. C. P. and Exchequer), part 1.
18	

EDWARD III.—1326.

Benloe (K. B. and C. P.), 32	| part 3—1 to 10, 17, 18, 21 to 28, 38, 39
Keilwey (K. B. & C. P.) 1 to 47	
Jenkins (Exchequer), 1 to 47	| Year book (K. B. and C. P.), part 4—40 to 50
Year book (K. B. and C. P.), part 2—1 to 10	
Year book (K. B. and C. P.),	| Year book, part 5—Liber As- sisarum, 1 to 51

RICHARD II.—1377.

Bellewe (K. B. and C. P.), 1	| Jenkins (Exchequer), 1 to 22 to 22

HENRY IV.—1399.

Jenkins (Exchequer), 1 to 14	| Year book (K. B. and C. P.), part 6—1 to 14

* Chaloner. De Rep. Angl. l. x.—See Barrington's Observations on the Statutes. 4th ed. 1775. p. 542.

HENRY V.—1413.

Jenkins (Exchequer), 1 to 10	Year book (K. B. and C. P.), part 6—1, 2, 5, 7, to 10
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HENRY VI.—1422.

Benloe (K. B. and C. P.), 2, 18	Year book (K. B. and C. P.), parts 7 and 8—1 to 4, 7 to 12, 14, 18 to 22. 27, 28. 30 to 39
Jenkins (Exchequer), 1 to 39	

EDWARD IV.—1461.

Jenkins (Exchequer), 1 to 22	Year book (K. B. C. P. and Exchequer), part 10. 5
Year book (K. B. and C. P.), part 9—1 to 22	

EDWARD V.—1483.

Jenkins (Exchequer)	Year book (K. B. and C. P.) part 11
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RICHARD III.—1483.

Jenkins (Exchequer), 1 to 2	Year book (K. B. and C. P.), part 11.—1 to 2
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HENRY VII.—1485.

Benloe (K. B. and C. P.), 1	<i>Moore (K. B. C. P. Exchequer and Chan.), 1 to 24.</i>
Jenkins (Exchequer), 1 to 22	
Keilwey (K. B. and C. P.), 12, 13, 17 to 24.	Year book (K. B. and C. P.) part 11—1 to 16. 20 to 24

HENRY VIII.—1509.

Anderson (C. P.), 25, &c.	<i>Dyer (K. B. C. P. Exch. and Chan.) 4, &c.</i>
Benloe (C. P.), 1 to 38	
N. Benloe (K. B. C. P. and Exch.), 22, &c.	Jenkins (Exch.), 1 to 38
Benloe, Keilwey, and Ashe (K. B. C. P. and Exch.)	Keilwey (K. B. and C. P.), 1 to 11, and 21
Brook's New Cases (K. B. C. P. and Exch.)	<i>Moore (K. B. C. P. Exch. and Chan.), 3</i>
Dalison (C. P.), 38	Year book (K. B. and C. P.), part 11, 13, 14, 18, 19, 26, 27, 29 to 38

EDWARD VI.—1547.

Anderson (C. P.), 1 to 6	<i>Dyer (K. B. C. P. Exch. and Chan.) 1 to 6.</i>
Benloe and Dalison (C. P.), 2	
Brook's New Cases (K. B. C. P. and Exchq.)	Jenkins (Exchequer), 1 to 6
N. Benloe (K. B. C. P. and Exchq.), 1 to 6	<i>Moore (K. B. C. P. Exch. and Chan.) 1 to 6</i>
	Plowden (K. B. C. P. and Exch.), 4 to 6

MARY.—1553.

Anderson (C. P.), 1 to 6	Dalison in Keilwey and Ashe (C. P.), 1, 4, 5
Benloe & Dalison (C. P.), 1 to 5	Jenkins (Exchequer), 1 to 5
Benloe in Keilwey and Ashe (K. B. C. P. and Exch.), 1 to 5	Leonard (K. B. C. P. and Exch.), 1 to 5
N. Benloe (K. B. C. P. and Exch.), 1 to 5	Moore (K. B. C. P. Exch. and Chan.), 1 to 5
Brook's New Cases (K. B. C. P. and Exch.), 1 to 5	Owen (K. B. and C. P.), 4 to 5
Cary's (Chancery), 5	Plowden (K. B. C. P. and Exch.), 1 to 5
Dyer (K. B. C. P. Exch. and Chan.), 1 to 5	

ELIZABETH.—1558.

Anderson (C. P.), 1 to 45	Goldesborough (all the Courts), 28 to 31—39 to 43
Benloe in Keilwey and Ashe (K. B. C. P. Exch.), 2 to 20	Hobart (all the Courts), a few cases
Bendloe (K. B. C. P. and Exch.), 1 to 17	Hutton (C. P.), 26 to 38
Benloe (C. P.), 1 to 21	Jenkins (Exchequer), 1 to 45
Brownloe & Goldesborough (C. P.), 11 to 45	Leonard (K. B. C. P. and Exch.), 1 to 45
Cary (Chancery), 1 to 45	Moore (K. B. C. P. Exch. and Chan.), 1 to 45
Coke (K. B. C. P. Exch. and Chan.), 14 to 45	Noy (K. B. and C. P.), 1 to 45
Croke (K. B. and C. P.) 24 to 45	Owen (K. B. and C. P.), 1 to 45
Dalison (C. P.), 1 to 6	Plowden (K. B. C. P. and Exch.), 1 to 21
Dalison in Keilwey and Ashe (C. P.), 1 to 6	Popham (K. B. C. P. and Chan.), 35, 39
Dickens (Chancery), a few cases	Saville (C. P. and Exch.), 22 to 36
Dyer (K. B. and C. P.) 1 to 23	Tothill (Chancery), 1 to 45
Godbolt (all the Courts), 17 to 45	Yelverton (K. B.), 44, 45

CHAPTER VI.

OF THE COURT OF CHANCERY,
DURING THE REIGN OF JAMES I. A. D. 1603 TO 1625.

The third reason of my convening of you at this time is as to the making of Laws, &c—I will thus far faithfully promise unto you that I will ever prefer the weal of the whole Commonwealth, in making of good Laws and Constitutions, to any particular or private ends of mine—a point wherein a lawful King doth directly differ from a Tyrant. But I forewarn you that you beware to make the seeking of too many laws *In corruptissima republica plurimæ Leges*; and the Execution of good laws is far more profitable in a good Commonwealth than to burden men's memories with the making of too many of them. I now turn me to you who are Judges and Magistrates under me: Remember, that the thrones you sit on, are God's, and neither yours nor mine; and that as you must be answerable to me, so must both you and I be answerable to God, for the due execution of our offices!—*Speech of James I. to his first Parliament. Commons Journals. A. D. 1603.*

Before I enter into the business of this Court, I shall publish and make known summarily what charge the King's most excellent majesty gave me when I received the seal, and what resolutions myself have taken.—So did the Roman Prætors set down at their entrance, how they would use their Jurisdiction. And this I should do in *verbis masculis*. No flourishing, or painted words, but such as are fit, to go before deeds.—In his Majesty I have a domesticall example to follow!—*Lord Bacon's Speech on taking his seat in Chancery. 1617.*

THE two *speeches* which preface this chapter are memorable instances of the magisterial difference of “sayings and doings;” and of the wisdom of control-

ing the power of doing evil, minimizing official responsibility, and establishing efficient preliminary securities for the performance of official duties. James I. on his accession to the British throne, was thought to have received from nature, education, and foreign travel, the most uncommon accomplishments for perfect monarchical rule; and perhaps no human being who ever acted on the theatre of the world, afforded more high promise of moral and intellectual aptitude for the judicial office, than BACON.

On the union of the Crowns of England and Scotland, Bacon, ingeniously respecting the prejudices of each country in favour of its own laws and tribunals, seized the opportunity of proposing a digest and reformation of the laws of both, retaining and consolidating the best of each, and repealing the worst. The speeches of Bacon were frequent and anxious in favour of this important object. The Historians however narrate that the King was impatient for the act of Union: the Commissioners made no provision on the subject of law-reform: a Parliamentary recess occurred, December 18; and February 10th, 1607, "the King signified his pleasure for the adjournment of the two houses." *

James, in his speech, on opening the following Session, talked of the facility of the proposed consolidation and reform—"As to the difference of the laws, he observed, that the *Feudal Law* about lands and tenures was the same in both realms; that the *Civil Law* took place in *Scotland*, only in cases where the municipal or common law was silent or defective; that the Statute laws might easily be altered in both countries to their common benefit and satisfaction; that he had a negative voice in

* Carte. vol. iii. p. 767.

the Scotch Parliament, as in the English, and that there was no such great difficulty in making an union of laws, as some imagined." *

Carte, in commenting on Bacon's attempt to reform the law and jurisprudence of England makes the following excellent remarks—" He had formed in the late reign, " and proposed to Elizabeth, an admirable scheme for " reforming the laws of England, grown too bulky, intricate, uncertain, and become a mere chaos of confusion, " by the ordinary practice of adding statute to statute, " upon every particular emergence or inconvenience that " arose, without any digesting them under proper heads, " and in a clear method to render them consistent and " perspicuous. It was a work of infinite use, labour, " and difficulty ; but Bacon's wonderful genius and " excellent judgment made him superior to all difficulties, " and he was perhaps the only man in England equal to " the undertaking. The necessity thereof hath increased " manifestly every day since his time : and whilst sordid " and venal lawyers finding their lucre where their unhappy clients feel their ruin, rejoice in what they call " *the glorious uncertainty of the law*, nobody hath yet had " public spirit enough to undertake, or perhaps the virtue " to think of a reformation, which would probably be " more beneficial to their country, than all the particular " statutes that can be made by parliament."

On the dissolution of the Court of Wards, in 1610, the Commons refused the compensation money of £200,000. per annum, demanded by the King, unless purveyance, was taken away and some further privileges granted to the subject. Among these conditions were the following—" that the just fees of all Courts and offices be printed

* Ibid. p. 769.

in a book ; that all printed statutes be surveyed, such as are useless and obsolete repealed, and such as are profitable concerning one matter, may, for the better ease and certainty of the subject, be reduced into one statute, to be passed in Parliament." * As on many preceeding occasions the money was received, and the conditions unperformed.

But to return to the history of the Chancery. James I. continued Egerton as Lord Keeper ; and on the 29th of June (A. D. 1603) the Great Seal was broken, and the new seal of James delivered to him ; and on the 24th of July following he was created Chancellor and raised to the peerage with the title of Lord Ellesmere.

This Chancellor discharged his duties with fidelity and industry, and no particular malversation or stretch of official power has been alledged against him. From the Journals of the House of Commons however, we gather some information that the people and the legislature sensibly perceived the growing evils in the Court. On the 25th of January, 1605, a bill appears to have been brought into parliament, enforcing on suitors the payment of fees for office copies, but it did not pass into a law. Mr. Lowe has well remarked that what the legislature refused to grant, custom has since sanctioned ; and the suitors are now compelled to pay for files of office copies which they do not want or require. On the 14th of February in the same session some very strong observations appear in the Journals † on the subject of law abuses, and particularly as to those prevailing in the court of Chancery. Antiquity is called Iniquity ; Custom, the mother of Error, and it is asserted that " fees grow greater."

* Winwood, iii. 194.—Journals, June 26. July 10, 16, 18.

† Comm. Journ. vol. 1. p 258.

May 31. A. D. 1614, " Mr. Fuller tendereth a Bill against the Chancery, which was pressed by divers to be read; but Mr. Speaker desired a respite thereof till to-morrow." * On the 2nd June, the bill was read a first time " concerning the Chancery Court, and to limit the power of the Lord Chancellor." † These entries plainly indicate that the storm was lowering which subsequently burst over the head of Lord Bacon.

James, in a speech in the Star-chamber, 1614, promised to cut away some of the superfluities of the law; but it was a *Stuartine* promise, and never performed. If he had kept his word it would probably have been *secundum artem*, for this equitable ruler was wont to say, that so long as he had the making of Judges and Bishops, *that* should be both Law and Gospel which best pleased him!

In the Chancellorship of Lord Ellesmere, A. D. 1616, arose the memorable dispute between the courts of Law and Equity (in which Sir Edward Coke, then Chief Justice of the Court of King's Bench, was a principal actor) whether a Court of Equity could give relief after or against a judgment at the common law. The details of this celebrated contest may be read in historical works, and especially in Bacon's official letter to the King. ‡

Indictments were preferred against the Suitors, Solicitors, Counsel, and Masters in Chancery, for having incurred a *præmunire*, by questioning in a Court of Equity, a judgment of the Court of King's Bench.

These circumstances are said to have greatly affected the old Chancellor, and to have hastened his death,

* Ibid. p. 502.

† Ibid. p. 505.

‡ Bacon's Works, 4to. ed. 1778. vol. iii.

which happened March 12, 1616—17. His person is described as remarkable for its venerable gravity, and many went to the Chancery to see him in his “pomp and circumstance,” on which Fuller quaintly observes—“happy they who had no other business there!” *

Bacon had been long hungering for the situation and succession, as is most humiliatingly exhibited in his own letters to the King and Villiers, where he strongly covets the “rem in spe.” These were times however, in which *all* public characters gained their offices by begging or bribing, except Coke, who declares that *he* was singular in obtaining his successive preferment without employing either *prayers* or *pence*.—Bacon was appointed Lord Keeper, 17th March, 1616, and Chancellor on the 4th January, 1617; little thinking of the ignominious consequences.—On taking his place in Chancery he delivered a very remarkable speech,† from which it appears that James, in his charge to him, had especially directed his attention to the reform of the practice and judicial decisions of the Court. The first direction was that the jurisdiction should not be extended. The second, that the great seal should not be affixed to Letters-patent as a matter of course. The third, that all unnecessary delays should be thenceforth avoided, without which the Subjects’ *remedy* was but mockery—*bis dat qui cito dat*. The fourth, that equity should be cheaper; and that the “brambles that grow about Justice” and *exactions* should be rooted out.—On these practical and excellent royal recommendations Bacon enlarges with singular discrimination and judgment. He

* Lord Ellesmere is supposed to be the author of a tract, “Privilege and Prerogative of the Court of Chancery.” 4to. 1641.

† See Rawley’s *Resuscitatio*. fol. ed. 1657, and Bacon’s works.

proposed to limit the jurisdiction of the court, by excluding all causes determinable at the Common-law, the Chancery being ordained, as he said, to *supply* and not to *subvert* the Law. He announced that he would "keep the keyes of the court" himself, and not refer demurrers or pleas to the Masters; and that he would set apart Tuesdays to hear all motions, "that the subject may have his *vale*, and that the Court do not keep and accumulate a mescellany and confusion of causes of all natures." He stated that in complaints after judgment at Common-law he would bind the party-complainant in a bond to the proof of his cause, so that the suitor should come into Equity "*tanquam in vinculis* at his perill." He pledged himself to discountenance Injunctions on the ground of priority of suit, because he would not "make it a matter of a horse-race or posting who shall be first in Chancery or in the Courts of Law;" and also not to grant injunctions on the mere statement of a bill, but only on matter confessed in the defendant's answer, unless called for by pressing circumstances. The occasional opinion and advice of the common-law judges, he mentions as a necessary aid to him in many equity cases. On the subject of the King's recommendation of speedy justice he emphatically said "I am resolved that my *decree* shall come speedily (if not instantly) after the *hearing*:" the great delay in this respect he alluded to as the fault of his predecessors, who often forgot causes for a term or two, which were then obliged to be set down for a *new-hearing* or a *re-hearing* some terms after, in order to refresh the Chancellors' memories—"of which kind of intermission I see no use, and therefore I will promise regularly to pronounce my decree within a few days after my hearing, and to *sign* my decree at least in the vacation after the

pronouncing, for fresh justice is the sweetest."—As the means of expediting and terminating the accumulation of litigation he communicated to the bar that he would "add the afternoon to the forenoon," and occasionally sit in vacation time. He stated, that he would not allow a Plaintiff to avail himself of an Equity Injunction for the palpable object of spinning out his cause by staying the common law process; and, if he perceived that the matter was not speedily prosecuted in Chancery he would immediately dissolve the injunction. On the fourth point of the King's precept—the diminishing the unnecessary charge to the subject—much would of course be effected by expedition, and curtailing the *length* of suits; but still further to attain so desirable an end, the Chancellor expressed the following intentions, which, from their striking application to the present times are well worth quotation—

"First therefore, I shall maintain strictly, and with severity, the *Former Orders*, which I find made by my *Lord Chancellor*, for the immoderate, and needless prolixity, and length of *Bills* and *Answers*, and so forth; As well in *punishing* the *party*, as *fining* the *Counsell*, whose hand I shall find, at such *Bills*, *Answers*, &c.

Secondly, for all the *Examinations*, taken in the *Court*, I do give charge, unto the *Examiners*, (upon perill of their places,) that they do not use idle *Repetitions*, or needless *Circumstances* in setting down the *Dēpositions*, taken by them; And I would, I could help it, likewise, in *Commissions*, in the *Countrey*; But that is most impossible.

Thirdly, I shall take a diligent Survey, of the *Coppies* in *Chancery*; That they have their just number of Lines, and without open or wastfull writing.

Fourthly, I shall be carefull, that there be no *Exaction*,

of any new fees, but according, as they have been, heretofore set, and Tabled."

"Lawyers fees I must leave to the conscience and merit of the Lawyers!" But as the senior barristers had monopolized the precedency of making motions, he proposed to open the trade by hearing the whole Bar on Tuesdays in rotation. "Lastly for the better ease of the subject, and the brideling of contentious suits, I shall give better (that is greater) *costs* where the suggestions are not proved then hath been hitherto used."

Such is the substance of this extraordinary speech; and doubtless it would never have been made, unless a determined plan had existed in the mind and councils of James I. to reform the court of Chancery. What were the subsequent circumstances or policy which prevented the promised reformation, whether the herculean labour of the task, or the necessity of maintaining corruption as the main spring of despotic power, cannot now be detected. Where many talents are given, much is required; and Bacon has justly incurred the grievous imputation and responsibility of acting in direct contradiction to the dictates of a high moral discrimination and a powerful understanding, adding another humiliating example of the difference between the quality of judgment and the power of acting up to its dictates.*

* Lord Bacon, in his abstract reflections, writes, "if any one see to be made a judge, for my own part I should suspect him." When his predecessor was dying he assumed the character of an entreating courtier praying for the Chancellorship: in the office we see him corrupt! No. 103, in his collection of Apophthegms is singularly applicable to his *practical* character, and to that of many modern lawyers—"103. When his Lordship was newly advanced to the great seal, Gondomar, the Spanish Ambassador, came to visit him. My Lord said, that he was to thank God and the King for that honour; but yet so he might be rid of the burthen, he could very

This oration of Bacon's, was, however, followed up in 1618, by some excellent "Ordinancies for the better and more regular administration of justice in the Chancery." In these orders the various proposals in his speech are especially enforced. The particular mention or abstract of them would be useless to the general reader, and the profession are of course possessed of the information in Mr. Beame's Collection of the general orders of the Court.

To give any full or impartial account of the subsequent charges against Bacon, would form a distinct work. The political factions which nurtured the intrigues against him, and his real want of judgment and integrity, have no relation to the present object. It is almost ungenerous and ungrateful needlessly to disinter the human frailties of a man, whose inestimable intellectual legacies have so enriched the moral and scientific world. Posterity has rescued his reputation from the jealous and rude grasp of his contemporaries: we now possess the precious stone cleared of the earthy encrustation which originally obscured its brilliancy. It is part of the scheme of Providence to prevent our self-worship, and the idolatry of each other: we should ever remember that the higher our situation, the greater our moral danger;

"willingly forbear the honour: and that he formerly had a desire, and the same continued with him still, to lead a *private* life. Gondomar answered, That he would tell him a tale of an old RAT, that would needs leave the world, and acquainted the young rats that he would retire into his hole, and spend his days solitarily,—and would enjoy no more *comfort*; and commanded them, upon his high displeasure, not to offer to come in unto him. They forbore two or three days: at last, one that was more hardy than the rest, lured some of his fellows to go in with him, and he would venture to see how his father did; for he might be dead: they went in, and found the old RAT sitting in the midst of a rich Parmesan cheese! So Gondomar applied the fable after his witty manner."

and the humility of a wise man will never covet the temptations of a court.

It is sufficient now to record, that Bacon was impeached in Parliament, for bribery in the administration of equity, committed to the tower, and deprived of office. Many explanatory facts could be collected, and much extenuation pleaded; but if guilty, his criminality was great; and if innocent, his degradation extreme and ignominious in consenting to record on the Journals of the House, a false confession of guilt. It is, however, but too probable that besides the notorious corruption of his servants and officers, he submissively and corruptly framed his mandates in conformity with numerous epistolary requests * addressed to him by Buckingham and other persons in favour of parties who had causes depending in Chancery. †

It is difficult in the mass of contradictory statements to ascertain the correct facts of Bacon's judicial habits and industry. We have his own authority, in a letter to the House of Lords, that he usually made two thousand decrees and orders in a year; it is however remarkable that notwithstanding this great increase of suits, there is not a single report of his decisions.

In the Star-chamber proceedings against Mr. Wraynham, for libelling Bacon, before referred to, we learn from Mr. Wraynham's defence, an individual case of grievance than which nothing can better shew the state of equity practice. Wraynham states that before he wrote the libel he had petitioned the King to reverse the

* Birch's Collection.

† See Comm. Journ. index vol. 1. article *Chancery*.—Lords' Journ. April, 1621.—Hargrave's State Trials, vol ii.—North American Review, No. 39. Appendix to Bushell's Mineral Productions.

judgment in his suit; to which the King answered that he would not attend to such petitions unless they charged bribery against his Chancellor. Whereupon Wraynham wrote his book on the subject of his complaints, boldly impugning Bacon's conduct. He states his own case in the following affecting narrative, extracted from his defence.—“In making whereof (the book) I mustered
 “together all my miseries; I saw my land taken away,
 “which had been before established unto me; and after
 “sixty-four Orders, and twelve Reports, made in the
 “Cause; nay, after Motions, Hearings, and Re-hear-
 “ings, fourscore in number, I beheld all overthrown
 “without a new bill preferred. I discerned the repre-
 “sentation of a prison gaping for me, in which I must
 “from thenceforth spend all the days of my life without
 “release: for in this suit I have spent almost £3,000.;
 “and many of my friends were engaged for me, some
 “damnified, others undone; and with this did accom-
 “pany many eminent miseries, likely to ensue upon me,
 “my wife, and four children, the eldest of which being
 “five years old; so that we, that did every day formerly
 “give bread to others, must now beg bread of others, or
 “else starve, which is the miserablest of all deaths: and
 “there was no means to move his Majesty to hear the
 “cause, but to accuse his Lordship of his injustice; this
 “and all these moved me to be sharp and bitter, and to use
 “words though dangerous in themselves yet I hope par-
 “donable in such extremities.”* The further citation
 of this case would only disgust the reader with the
 servility of the lawyers, and their ludicrous idolatry of
precedent.

Whatever might be Bacon's conduct in office, we must not omit to mention, that his legal works contain some

* State Trials. vol. vii p. 106.

very important suggestions on the reform of the general system of British law. His essay on Judicature plainly indicates that he had a perfect conception of the judicial character. In his "Proposition touching the compiling and amendment of the Laws of England," written when Attorney General to James, we have some admirable and practical remarks. He there openly acknowledges that "our lawes as they now stand, are subject to great incertainties, and variety of opinion, delayes, and evasions; whereof ensueth"—

"1. That the *Multiplicity*, and length of Suites is great.

2. That the Contentious Person, is armed, and the Honest Subject, Wearied, and Oppressed.

3. That the *Judge*, is more *Absolute*; Who, in doubtful Cases, hath a greater stroak, and Liberty.

4. That the *Chancery Courts*, are more filled, the Remedy of *Law*, being often obscure, and doubtfull.

5. That the ignorant *Lawyer*, shrowdeth his ignorance of *Law*, in that, doubts are so frequent, and many.

6. That Men's *Assurances*, of their *Lands*, and *Estates*, by *Patents*, *Deedes*, *Wills*, are often subject to question and hollow; And many the like Inconveniences."

The Penal laws he particularly denounces as so many *snares* * for the ignorant and vicious. He states that a great accumulation of contradictory Statutes had taken place, so that the certainty of the law was lost in the heap; and he compares the intermixing obsolete statutes in the same code with those which are often executed, to Mezentius's fastening dead bodies to the living, "*adeo*

* "One of the Seven was wont to say; "That Laws were like cob-webs, where the small flies were caught, and the great brake through." (Bacon's Apophthegms. No. 291) This sentiment has been singularly echoed, not to say plagiarized, by subsequent wise people. The reader

ut leges vivæ, in complexu mortuæ, perimantur—the living die in the arms of the dead. After exploding the stale objection of *innovation* against reform, which he calls a “common-place” argument, he condescends to say that the amendment of the laws of England would *not* be an innovation or without precedent because the Romans by their Decenvirs made laws; the Athenian Sexvir Commission from time to time reformed the laws of Athens; Lewis XI., Edgar, and Edward I. altered and improved the laws of their respective countries—

will be not a little amused with the following collection which have occurred to the author; and Lord Coke, who says, “to cite verses standeth well with the gravitie of our lawyers,” must be the apologist for quoting poetry.

Should I sigh, because I see
Laws like spider-webs to be;
Where lesser flies are quickly taen,
While the great break out again.

R. Brathwaite. 1616. Fly from care.

Now since these rules for Laws, do even like Laws,
Equally serve the Tyrant and the King;
This, to good uses for the public cause,
That, all men's freedoms under will to bring,
One Spider-like, the other like the Bee,
Drawing to help or hurt humanity.

The Remains of Fulke Greville Lord Brooke. 1670. Of Laws.

“Who knows not that the web of the Law entangles the small flies, and dismiseth the great?”

Warre's Corruption and Deficiency of the Lawes of England. 1649.

Lord Somers, makes a sensible remark on the Court of Star-chamber; viz. that whatever its evils it punished many “offenders too big for ordinary justice.”

hence he repeats to James I. the words of Cicero to Cæsar—

Nil vulgare te dignum videri possit.

Bacon then gives some practical directions how the reform in question is to be effected, by the digest or re-compiling of the Common Law and the Statutes. He proposes that simple historical books should be composed on the origin and antiquity of the law; that all the obsolete cases should be resolved; the *homonymiæ* or repetition cases weeded; the *antinomiæ* or contradictory cases decided; "all idle queries, which are but seminaries of doubts," omitted; and all prolix cases abridged of their "tautologies and impertinences." For the reform of the Statutes, he simply recommends the repeal of all obsolete and sleeping statutes; the amelioration of the Penal laws; and the reducing of concurrent statutes, heaped one upon another, to one clear and uniform law."

The great mind of Bacon appears to have consoled itself, in its bitter humiliation and suffering, by plans for the improvement of the laws of his country—a proof also of his knowledge and deep interest in his profession. We find in the collections of his works "An offer to the King of a Digest of the Laws of England," "as I have now (by God's merciful chastisement and special providence,) time and leisure." In this proposal he says "the laws of most kingdoms and states have been like buildings of many pieces, and patched up from time to time, according to occasions, without frame or model." In a subsequent letter to the learned Dr. Andrews, Bishop of Winchester, supposed to be written about the year 1622, containing an account of the occupations and consolation of his retirement, he writes—"I have also

“ entered into a work touching *Laws*, propounding a
 “ character of Justice in a middle term, between the
 “ speculative and reverenced discourses of Philosophers,
 “ and the writings of Lawyers which are tied and ob-
 “ noxious to their particular laws. And although it be
 “ true, that I had a purpose to make a particular *Digest*
 “ or re-compilement of the Laws of mine own nation ;
 “ yet because it is a work of assistance, and that I can-
 “ not master by my own forces and pen I have laid it
 “ aside.”

Such were the wise and patriotic views of this illustrious man ; and although his practice and his theory wereso singularly opposed, yet the former affords a melancholy but unanswerable proof of the wisdom of the latter. We should bear in mind, in condemning the inconsistencies of Bacon, the nature of the times in which he lived, and that he *wrote* for posterity ; and although we cannot and ought not to shut our eyes to the great defects of his character, yet they are, at the present distance of time, but as spots on the sun : they teach us that the great principle of human legislation and prayer, should be—“ *lead us not into temptation.*” *

* In Mallet's meagre life of Bacon, where Johnson says that the Biographer forgot that his hero was a philosopher, one applicable reflection may be quoted—“ The offices of Attorney and Solicitor General, have been
 “ rocks upon which many aspiring Lawyers have made shipwreck of their
 “ virtue and human nature. Some of these gentlemen have acted at the
 “ bar as if they thought themselves, by the duty of their places, absolved
 “ from all the obligations of truth, honour, and decency. But their
 “ names are upon record, and will be transmitted to after ages with those
 “ characters of reproach and abhorrence that are due to the worst sort of
 “ murderers ; those that murder under the sanction of Justice.” Men,
 who *before* they attained office were the active friends of legal reform,
afterwards are the panegyriats of corruption and the calamitators of their
 former political connections.

The attempts at legal reform during this period, seem to have been confined to the political ruin of Bacon, and that being accomplished, no further efforts of any importance were made.

In the Lent of 1620, the Seal was put into commission. In 1621 a debate appears in the Journals * in which Mr. Alford asserts that causes in Chancery, lasted 20 or 30 years; that injunctions were granted without hearings; that the officers were corrupt and the judicial power too great for any one man. He instanced an excellent rule in the civil Law, of a fine for retaining causes in court, above three years; and proposed bills for regulating the practice of the Chancery, and moderating the court fees. On the 27th April, † Coke asserts that "the Chancery embraces so many causes as the Chancellor and Master of the Rolls cannot possibly determine." On the 30th of the same month, we find an entry in the Journals ‡ of the first reading of "an act to establish two Judges' assistants in the Court of Chancery, and to lessen the charge of suits in that court;" "and also a bill of regulating the Chancery."

In the Parliament 21 and 22 James I. A. D. 1623-4, some further Parliamentary *committees* and examinations were instituted on the means of reforming the courts of justice. But to be brief, no efficient reform was effected in this reign. The statute, 21 James I. c. 28, entitled—"An act for continuing and reviving of divers statutes and repeal of divers statutes," partially carried into effect the consolidation of the penal statutes.

When the great seal was brought to James from Bacon, his Majesty is reported to have exclaimed—

* Comm. Journ. vol. 1. p. 573-4.

† Ibid. p. 594.

‡ p. 596.

"Now, by my soule, I am pained at the heart where to bestow this ; for, as to my lawyers, I thinke they be all knaves!"

On the 10th of July, 1621, Archbishop Williams, a Welch Divine, celebrated for his knowledge of *Hebrew* and the *dead* languages, was made Lord Keeper, as a person well qualified to administer equity! He had been chaplain to Lord Ellesmere, who bequeathed to him his law manuscripts. With this stock in trade, and the advice of Sir John Walker, Chief Baron of Exchequer, the learned Ecclesiastic was thought and thought himself competent to the duties of the Chancellorship. It is stated, that on the fall of Bacon, Buckingham employed Dean Williams to value the place; and on his Majesty perusing the valuation, he was sensibly impressed with the fitness of Williams for the situation. Williams's speech in Council on his acceptance of the office, in its pedantry and *nolo episcopari*, is certainly a proof of sagacity in his discrimination of James's character. With abundance of latin quotations, he says, "I do not trouble my head to find the reason of this advancement because I take it for no ordinary effect, but an extraordinary miracle."* He confesses his utter inaptitude for the judicial office; and states his willingness, if he prove a dull scholar, to retire to his original profession, "a Keeper of Sheep." With this view he probably retained his church preferment *in commendam*, as two strings to his bow. It appears that the King, at his request, did not take the seal from the commissioners for ten months, that the inexperienced Chancellor might have time to study his new business; for which purpose Williams kept Sir Henry Finch, an eminent lawyer, in

* Hacket's Life of Williams.

his lodgings, as a tutor to advise with on equity questions. He was also assisted, during the first eighteen months, by the constant presence and advice of the Master of the Rolls and two Judges. After the apprenticeship of a few months he appeared in Court, about the end of the following Michaelmas term.* In his speech on that occasion, he laid down certain principles for the guidance of his judicial character, which may be briefly stated as follows: 1. Never to make a decree inconsistent with the common or statute law. 2. To discourage all bar motions which did not further or hasten the hearing of a cause. 3. Not to reverse the decrees of his predecessors without special reasons. 4. Seldom to refer causes, as it deferred the hearing of them. 5. Not to protect indiscreet sureties. 6. To maintain the rules and orders of the court as far as possible."†

It is not a little strange that the first business of the new Lord Keeper was to review the decrees of his predecessor, and to preside in the House of Lords! What he lacked however in legal judgment he made up by dispatch; indeed, his hasty decisions soon became the object of remark and complaint: and he appears, in a letter to Buckingham, containing an account of his first year's noviciate, in some degree to confess the truth of the charge—"In this place I have now served his Majesty one whole year diligently and honestly, but to my heart's grief, by reason of my rawness and inexperience, very unprofitably. Yet if his Majesty will examine the Register, there will be found more causes finally ended this year, than in all the seven years preceding; how well ended, I confess ingenuously, I know not: his Majesty, and your Lord-

* Dewes' Life of Bacon. p. 58.

† Hacket's Life.

“ ship, who no doubt have received some complaints, though in your love you conceal that from me, are in that the most competent judges.” (10 July, 1622.)

Sir Anthony Weldon* asserts that Williams owed his rise to political considerations, and to Buckingham's scheme for marrying him to his mother. Weldon's authority, as a party writer, must be received with caution; but the following account of the “reasons of state” for the new appointment, appear entitled to some degree of credit.

“ In *Bacon's* place comes *Williams*, a man on purpose brought in at first to serve turnes, but in this place to doe that which none of the Laity could bee found bad enough to undertake, whereupon this observation was made, that first no Lay-man could bee found so dishonest as a Clergy-man; next, as *Bacon* the Father of this *Bacon*, did receive the seales from a Bishop, so a Bishop againe received them from a *Bacon*; and at this did the Lawyers fret, to have such a flower pulled out of their Garland.—This *Williams*, though, he wanted much of his Predecessors' abilities for the Law; yet did he equal him for learning and pride, and beyond him in the wale of bribery, this man answering by petitions, a new way, in which his servants had one part, himselfe another, and so was calculated to be worth to him and his servants £3000. *per annum*, a new way never found out before.” †

Hacket asserts that the imputation of hasty judgment is groundless; as also that of Williams's frequent private hearings in his chambers, which the biographer affirms were not for private gain, but for the dispatch of

* Court and Character of King James, 12mo. 1650.

† Ibid. p. 139.

poor men's causes; and that the Chancellor is not the first who has been accused of his good works: if the accusations, however, are well founded, certainly he would not be the first whose vices, by a fulsome biographer, had been metamorphosed into virtues, more particularly in those times pregnant with sin and hypocrisy. The discovery of historic truth is indeed most difficult. Thus we find the Chancellor's patron, Buckingham, in Michaelmas term, 1623, instigating Lord Chief Justice Hobart to certify to the King, that Williams from his ignorance and inability was unfit for the Keeper's place; in which case Buckingham promises to displace the Keeper and put in the Chief Justice. But Hobart, it appears preferred a certainty to a speculation, or in the following reply conscientiously bore testimony to Williams's official aptitude—"My Lord, so much might have been said at the first, but he shall do the Lord Keeper great wrong that shall say so now."—By Laud's Diary we find that Laud (whom Williams had promoted to a Bishopric and political power) having quarrelled with the Lord Keeper, predicted Buckingham's influence against him, and pronounced Williams a "dead man," that is to say, dead in the law.—The future was a proof of Laud's spirit of prophecy.

Clarendon * represents Williams as corrupt in office, and as swayed by the worst and most violent passions. Without, however, delivering any verdict on this conflicting testimony, and allowing the Lord Keeper to have been a very *learned* man, certain it is that he was not qualified for the judicial office; and that his continual employment in political business must necessarily have withdrawn his time and attention from his duties in the Court of Chancery.

* History of the Rebellion, b. 2.

As the first speech of James contained a fulmination against the Law and Lawyers, so did his parting words. Whether he had a real prejudice against the craft of his law-subjects, or whether he only catered to the public prejudice against them, is doubtful: but in the last speech he made in Parliament, he declares "I spake to the face of many here present, the Lawyers, of all the people of the land, are the greatest grievance to my subjects; for when the case is good to neither party, yet it proves good and beneficial to them!" *

On the death of the King, in the spring of 1625, Williams preached his funeral sermon, printed under the title of "Great Britain's Solomon," † the text taken from 2 *Chronicles* ix. 29, 30, 31.—*Now the rest of the acts of Solomon first and last, are they not written in the book of Nathan, the prophet, &c. and in the visions of Iddo the seer, &c.*—Verily, they are recorded in English history; and no varnish of priestcraft can conceal the vices of a pedant, a hypocrite, a profligate, and despotic monarch.

Considering the duration of James's reign, the statute book was not much enlarged. One hundred and thirty-

* Parl. Hist. vol. vi. p. 341.

† The *Solomon-like* character of James was his favourite affectation, and consequently the continual theme of the adulation of his courtiers. Hudson, in describing his pedantic personal exercise of the judicial power in the case of the Countess of Exeter against Sir Thomas Lake, writes, "His most excellent Majesty, with more than *Solomon's wisdom*, heard the cause for five days, and pronounced a sentence more accurately eloquent, judiciously grave, and honourably just, to the satisfaction of all hearers and of all the lovers of justice, than all the records extant in this kingdom can declare to have been, at any former time, done by any of his royal progenitors." p. 9.

eight public acts were added to it. Monopolies received a vital wound, and the Statute of Limitations was in many respects an excellent enactment.

The contemporary reporters were as follows:—

JAMES I.—1603.

Anderson, (C. P.), 1	Jenkins (Exchequer), 1 to 21
Bendloe (K. B. C. P. and Exch.), 19 to 23	William Jones (K. B. and C. P.), 18 to 23
Bridgman (C. P.), 12 to 19	Lane (Exchequer), 3 to 9
Brownlow & Goldesborough (C. P.), 1 to 23	Leonard (K. B. C. P. and Exch.), 1 to 12
Bulstrode (K. B.), 7 to 15	Ley (K. B. C. P. Exch. and Court of Wards), 6 to 23
Cary (<i>Chancery</i>), 1	Moore (K. B. C. P. Exch. and Chan.), 1 to 18
Coke (K. B. C. P. Exch. and Chan.) 1 to 13	Noy (K. B. and C. P.), 1 to 23
Croke (K. B. and C. P.), 1, 23	Owen (K. B. and C. P.), 1 to 12
Davis (K. B. C. P. & Exch.), 2 to 9	Palmer (K. B.), 17 to 23
Glanville (election before committee of H. C.), 21 and 22	Popham (K. B. C. P. and Chan.), 15 to 23
Godbolt (<i>all the Courts</i>), 1 to 23	<i>Reports in Chancery</i> , 13
Hobart (<i>all the Courts</i>), 1 to 23	Rolle (K. B.), 12 to 22
Hutton (C. P.), 10 to 23	Tothill (<i>Chancery</i>), 1 to 23
	Winch (C. P.), 19 to 23
	Yelverton (K. B.), 1 to 10

CHAPTER VII.

OF THE COURT OF CHANCERY,
DURING THE REIGN OF CHARLES I. A. D. 1625 TO 1649.

Why, under the pretence of Equity, and a Court of Conscience, are our wrongs doubled and trebled upon us, the Court of Chancery being as extortious, or more than other Court? Yea, it is a considerable *Quære*, Whether the Court of Chancery were not first erected merely to elude the Letter of the Law, which though defective, yet had some certainty; and, under a pretence of conscience, to devolve all causes upon mere Will, swayed by corrupt interest — *The Corruption and Deficiency of the Lawes of England*, by John Warre. 4to. 1649.

The execution of Tresilian, Blake, and Usk, and the rest, together with the perpetual banishment of the other Legicides, did, for several following generations, serve as an excellent almanack for the meridian of Westminster Hall, and a *Circumspecte Agatis* to many succeeding Judges, until about the end of Elizabeth's reign. — *Petyt. Jus Parliamentarium*. ch. viii. p. 211.

These errors (injustice, &c) are not to be imputed to the Court, but to the spirit and over activity of the *Lawyers*; who should more carefully have preserved their profession, and its professors, from being profaned by those services which have rendered both so obnoxious to reproach. The damage and mischief cannot be expressed, which the Crown and State sustained, by the deserved reproach and infamy that attended the Judges, by being made use of in these and like acts of power. — *Clarendon. History of the Rebellion*.

IN this reign the sins of the fathers were visited on the children. In the *private* character of Charles there is much to admire; in his *public* history every thing to condemn. The epoch at which he commenced his unhappy reign was remarkable in the annals of the country;

and peculiarly unpropitious for the impunity of judicial corruption and regal misrule. In consequence of Common recoveries enabling the nobility and feudal landed proprietors to alienate their entailed possessions, the COMMONALTY again became a *third* estate of the realm. The progress of the Popular interest had been also rapidly accelerated by the previous dissolution of the Religious Houses, and the subdivision of the Church property; which, with the Statute of Wills, and the great increase of trade and commerce, enabled the PEOPLE, through the House of Commons, to gain a new and formidable political influence in the state. The English spirit of independence became gradually freed from its long imprisonment, and scared the ghostly dominion of bigotry and despotism. The gradual and silent, but remarkable progress of PUBLIC EDUCATION, aided the *moral* revolution which from the 15th century had been progressively spreading over England; and the REFORMATION powerfully disseminated those great principles of freedom which are now flourishing throughout the world.

The progress of knowledge and improvement of science in the preceding centuries was in exact proportion to the spread of Education. The increase of the General Studies or Universities, the Episcopal or Cathedral Schools, the Monastic or Conventual Schools, the Grammar Schools of the towns and cities, and the schools of the Jews, produced more remarkable intellectual and political effects than are generally observed by those who have not directed their historical enquiries to the subject. When the Norman Conqueror ordered that all children at school should be taught French and Latin (according to Fortescue,* that the Normans might

* De laudibus legum Angliæ. c. 48.

not be deceived in their revenue and fiscal accòmpts) he little thought that he was springing a mine under the foundations of tyranny and ignorance. In the thirteenth century so many schools were founded, and so many sciences taught in London and its environs, that it was justly called "A THIRD UNIVERSITY."* In Knight's life of Colet it is stated that in the half century preceding the Reformation there were more Grammar Schools founded and endowed in England than in the preceding 300 years. The ART of PRINTING, may be termed the Telegraph of Knowledge, "the light that shines from the high mountain's top of Knowledge." In these events every reflecting mind must see the *causes* of the great political events of the 17th century.† About the year 1627, Sir Fulke Greville founded the historical lectureship at Cambridge, the chair of which was first honoured by Isaac Dorislaus, Doctor of civil law, the learned and enlightened Anglo-Dutchman, afterwards banished the kingdom for the "liberal" sentiments expressed in his lectures on the principles of government and political economy. In many of these circumstances and other influences, though apparently insignificant, may be traced the noble stand made by the Tory nobility in the upper house of Parliament against the tyranny of the

* Sir George Buc's third university of England, at the end of Stowe's Chronicle.

† The venerable John Fox the Martyrologist, with more truth than in many of his observations, makes some striking reflections on the consequences of the invention of Printing.—"By Printing tongues are known, knowledge groweth, judgment encreaseth, books are dispersed, the Scripture is seen, the Doctors be read, stories be opened, times compared, truth discerned, falshood detected, and with finger pointed, and all through the benefit of Printing. By this Printing what is known in one nation is opened to all."

Stuarts. In the bold and vigorous expansion of minds suddenly freed from the shackles of ignorance, we observe the origin of the great principles of civil liberty, discovered in the subsequent works of VANE, ROBERT LORD BROOKE, JEREMY TAYLOR, MILTON, and MARVEL; and although mixed up and encumbered with much of the inconsistent nonsense of the times, yet, like the loadstone, embedded for ages in primeval rock, they directed the compass which steered the vessels of discovery round the world: they afford the gratifying and convincing proof that whatever may be the temporary differences of *party* prejudice and local dissension, great minds all worship at the altar of Freedom. And let us never forget, in the wonderful advancement of learning and science in after times, the debt of gratitude due to those illustrious spirits of former days, “great lights in dark ages,” whose disinterested self sacrifices ensured the preservation of our liberties, and whose unaided and original mental labours were the stepping-stones and scaffolding of our present intellectual elevation.

It was unfortunate that at *such* a time Charles should succeed to the throne, imbued with principles of Government the reverse of those calculated for such perilous and remarkable times. The doctrines of divine right and passive obedience were then fashionable, and revered throughout Europe, and the Stuarts considered them as the foundation of their title to the British throne. Charles was taught by his father to esteem it a great nuisance that he could not appropriate his subjects’ monies without the authority of Parliament; but he had not been taught, the subsequent practical art of governing *through* a Parliament, by bribery and “borough-mongering.” This period of British History has, how-

ever, been so fully investigated, and especially in the recent invaluable works of Mr. Brodie and other modern historians, that no details can be requisite for the present object. Misrepresentation and wilful calumny have been amply displayed by the writers on both sides, but those who have patiently and honestly directed their attention to the unprejudiced history of the times of the Stuarts and the Commonwealth, cannot but agree that all who take their information from the court-writers alone, will know little more about events and characters than of the interior of Africa. Mr. Brodie could not confer a greater obligation on the literary world than by placing Clarendon in the same crucible of historical analysis in which Hume has just been assayed, and discovered to be so much wanting.

But to resume the history of the Chancery. Laud's prediction was speedily accomplished by Buckingham procuring the removal of Williams; and a few days after Charles's coronation, Lord Coventry was put into the Keeper's office, 1st November, 1625. A previous intimation had been given to Williams from Charles, that the surrender of the seal would be soon expected; the King insinuating that his father had the intention of limiting it to a *triennial* office; in the wisdom and observance of which paternal resolution, Charles pretended to concur and to adopt in his own reign.

Weldon says, that Buckingham displaced Williams because the latter would not carry into effect his contract (the consideration of the preferment,) of marriage to his Grace's mother: "now being come to the height of his preferment, hee did estrange himselfe from the company of the old countesse." On the commencement of the disputes between the Crown and the Parliament, Williams, by his injudicious and intemperate conduct

fanned the flames of civil discord. Like most of the lawyers, as appears in Clarendon, he took retainers on both sides; and it is scarcely possible to detect on behalf of which party the wishes of the lawyers were really engaged; or whether, in the vulgar but expressive language of the day, they were only "waiting to see which way the cat jumped." To the corrupt conduct of the heads of the law, Berkeley, Trevor, and others, was very mainly owing the calamities of those eventful times.* In what plight the Archbishop left the Chancery may be seen in Carey's *Present state of England*, (4to. 1627,) where the then expensive state of law procedure is strongly condemned in a catalogue of three great national grievances and sins. In his paragraph "Touching suits in Law," Carey narrates several instances which verified the saying, "if you go to law for a nut, the Lawyers will crack it, give each of you half the shell, and chop the kernell themselves." He states that two men went to law respecting a hive of Bees, and before the termination, he that had spent least, had disbursed five hundred pounds. Another instance he mentions of two brothers who contested in Chancery, the right to a chain of gold worth £60. : the suit proceeded until they had spent above £100. : the eldest at last overtured to the younger brother, "you see how these men feed on us, and we are as near an end of our cause, as when we

* Charles, however, in his difficulties, had recourse to the advice of his late Keeper, and sent for him to Oxford, in 1644, to consult him on the then situation of his affairs. Williams's advice was singularly sagacious—"Cromwell is the most dangerous enemy your Majesty has; for though he is, at this time, of mean rank and use, yet he will climb higher.—My humble motion to your Majesty, therefore, is that either you would win him to you by promises of fair treatment, or catch him by some stratagem, and cut him short!"—(*Philips's Life of Archb. Williams*. p 290)—Creditable advice to give and receive!

began ; I will give you one half of the chain, and keep the other, and so end this endless cause ; and I pray let us both make much of this wit, so dearly bought : ” thus was this cause ended. Many similar examples are given by the author, of suits “ spun at length like a twine thread, and twisted thro’ divers courts.” The multitude of Attornies in the Courts of Common Law and Chancery is represented as so many decoys to catch geese, “ which may well be compared to such as stand with Quail-pipes, ever calling the poor silly bird into the net.”—Carey states that in 1640 there were not more than two or three Attornies in the Isle of Wight, and not many more suits in law ; but that at the period of his writing there were at least sixty Solicitors, and many more suits. He proposes as a remedy the introduction of periodical district commissions, in every parish, for the recovery of small debts, and the investigation of criminal misdemeanour ; also a reference, in civil matters, to neighbours on the principle of a jury. The then state of the Law is pronounced no remedy for wrong, and the old Latin proverb applied—*Inquissima pax justissimo bello anteferenda*, the most unjust peace is preferable to the most just war.—Carey classes the evils of the law into seven divisions, as the “ seven notes ” he desired “ to pick out of the long gowns,” and states that the last Parliament “ began with intent to reform the same.” He especially denounces the Court of Chancery as a gulph without a bottom, never full, a Court swelling and ready to burst with causes, and its forms of pleading “ full of impertinent matter, with large margins, great distance between the lines, and protraction of words, and with their many dashes and slashes put in places of words.” He particularly intances the Interrogatories and Examinations of Wit-

nesses, as long, tedious, needless, and costly, to the grievance and excessive charge of the subject: and lastly, that the chief clerks and officers were prototypes of their modern fellows—"fain amend any abuses that make not for their own profit, but none other." *

Lord Keeper Coventry appears to have carried on the business of the Court, much after the fashion of his judicial predecessors. L'Estrange, in recording his death, (1639) eulogizes his character at the expence of those whom he succeeded; and appears to consider the mixture of the *political* with the *judicial* character quite incongruous; and virtue in such a union as something *miraculous*. "His train and suit of followers was disposed agreeably to shun both envy and contempt; not like that of the Viscount St. Alban's, or the Bishop of Lincoln, whom he succeeded, ambitious and vain; his Port was state, their's ostentation. They were indeed the more knowing men, but their learning was extravagant to their office: of what concerned his place he knew enough, and which is the main, acted conformable to his knowledge; for in the administration of justice, he was so erect, so incorrupt, as captious malice stands mute in the blemish of his fame: a miracle, the greater when we consider that he was also a Privy Counsellor." †

This description of the state of the Chancery by Carey, does not argue any desire on the part of Lord Coventry to improve his court. Whitelocke says he was of "no transcendant parts or fame;" and Weldon asserts that if his actions had been scanned by a Parliament he had been found as foul a man as ever lived. Clarendon, of

* Reprinted in the Harleian Miscellany, vol. iii. p. 197. ed. 1750.

† L'Estrange's Reign of Charles II. fol. ed. 1625. p. 172.

whom it is well said, that he could paint a good picture but no portrait, has given a picturesque character of the "venerable" Lord Keeper, the reverse of Weldon's: but in the fine colouring of the historian of the rebellion we discern that Coventry was opposed to all improvement: "he knew the temper, disposition, and genius of the kingdom most exactly; saw their spirits grow every day more sturdy, inquisitive, and impatient; and *therefore* naturally abhorred all innovations, which he foresaw would produce ruinous effects!" Coventry's sagacity and adaptation to the times are however seen in the fact of his continuing till death in an office, the tenure of which was so precarious that no man had died in it for forty years.

In Mr. Beame's collection, several orders will be found for the partial remedy of abuses. In the Harleian MSS. No. 2207, are "Ordinancies made by the Lord Keeper Coventry (with the advice and assistance of Sir Julius Cæsar, Master of the Rolls, &c.) for the redresse of sundry errours, defaults, and abuses, in the High Courte of Chancerye." By the Registrar's book these appear to have been made in November 1635; and they certainly contain some strong and efficient remedies, which perhaps is the reason why they were not published in the editions of the orders of 1698, 1712, 1724, and 1739. They will be seen in Mr. Beame's collection at length. The three first ordinances if *enforced*, instead of being *re-enacted* by Clarendon and succeeding Chancellors, would have gone to the root of one great evil, the impertinent length of equity pleadings.

"1. That bills, answers, replications, and rejoinders, be
 "not stuffed with repetitions of deeds or writings *in hæc*
 "*verba*, but the effect and substance of so much of them only
 "as is pertinent, and material to be set down, and that in

“ brief and effectual terms: that long and needless traverses
 “ of points, not traversable nor material, causeless recitals,
 “ tautologies, and multiplication of words, and all other
 “ impertinencies occasioning needless perplexity, be avoided,
 “ and the ancient brevity and succinctness in bills and other
 “ pleadings restored. And upon any default herein, the
 “ party and counsel under whose hand it passeth, shall pay
 “ the charge of the copy and be further punished as the
 “ case shall merit.

“ 2. When the defendants have answered, the plaintiffs
 “ and their counsel are seriously to advise of the answer; and
 “ if they find that, upon the answer alone, without further
 “ proof, there be sufficient grounds for an order or decree,
 “ to proceed upon the answer without further lengthening
 “ the cause; or, if it be needful to prove one, or a few par-
 “ ticular points, to reply unto these points, and not to draw
 “ into pleadings or proofs any more than those necessary
 “ points, thereby making long books and putting both
 “ aides to unnecessary charges: the defaulters herein to be
 “ punished by paying the charge of the copies, or otherwise,
 “ as the case shall require.

“ 3. That interrogatories for examining of witnesses, be
 “ drawn only upon points material, and not upon matters
 “ which are either confessed in the pleadings, or are im-
 “ pertinent and needless to be proved.

“ That the articles which are usually thrust into the
 “ beginning of every schedule of interrogatories, as it were
 “ of form or course, touching the witnesses knowledge of
 “ the parties, plaintiffs or defendants, of the lands, towns,
 “ and places in the pleadings, and the like, be not so need-
 “ lessly used as they are.

“ But if for cross-examining any witness, or for other
 “ special reasons, it shall be necessary to minister any
 “ such question, any man is left at liberty to do therein as
 “ much as shall be pertinent and needful, in a due and fitting
 “ place. And if any shall offend against this, the party,

“and such as drew the interrogatories, shall be punished by
 “paying as much as the other side is by that means over-
 “charged in copies, and further as the case shall merit.”

In 1635, by one of the ordinances of this Lord Keeper, the *Plague* appears to have temporarily suspended the business of the Chancery; and was considered a visitation, if possible, greater than the sore evils of equity litigation.

In Clarendon, (book iv.) there is a very amusing account of a contention between the two learned professions of law and divinity, relative to the introduction of the civil law into the court of chancery and tythe causes. The lawyers rather rudely assaulted the character of the Clergy, and Clarendon's opinion of his legal brethren may be seen in the following remark—“I do not at all wonder, that, in the great herd of the Common Lawyers, many pragmatistical spirits, whose thoughts and observations have been contracted to the narrow limits of the few books of that profession, or within the narrower circle of bar oratory, should go along with the stream in the womanish art of inveighing against persons when they should be reforming things.” He expresses his surprise that the Lawyers should seek to separate “Church and State,” and predicts that the time will come when they must discover the necessity of supporting the *Church* as one of the main stays of the system of *Law*—a prophecy which it will be seen was not long after singularly verified. Clarendon* boldly says that

* But in the midst of these unsparing animadversions on the *lawyers*, Clarendon, like all his profession, bursts into hysteric raptures on the perfectability of the *law*—“that great and admirable mystery, the Common Law (upon which no man looks with more affection, reverence, and submission.)” *Hist. Rebell.* b. iv.

“if the well disposed fabrick of the Church be rent asunder, the Law itself will not have the same respect and veneration from the people.” He does not shew wherein the author of the christian religion is mistaken in asserting that his law and church are *not* of this world; nor does the historian of the rebellion acquaint us whether this supposed relationship proceeds from the circumstance of the early Chancellors having been Ecclesiastics: this volume, however, will shew that the connection is between the *Professors*, but not the *religion*; and that these two learned *professions* have been pillars and buttresses to each other’s establishments, which when pulled down have certainly let fall the fabric—of their own worldly erections.

In 1639, 23rd January, Sir John Finch, Chief Justice of the Common Pleas, was made Lord Keeper. This infamous Judge was doubtless thus rewarded for his former services of drawing and propounding to the other Judges the question of ship-money, and for having obtained their answer favourable to the Crown “after many solicitations, with promises of preferment to some, and high threats against others he found hesitating and doubtful.”* Such an important service, together with his iniquitous conduct on his circuits, and his corrupt judgments in the Common Pleas, gave him an indefeasible right in those days to the seals. His former conduct, as Speaker of the House of Commons, was an earnest of what might be expected from him as Prolocutor of the Lords. Thus, on the meeting of parliament, in April, 1640, this corrupt administrator of the law made himself notorious by a speech on the omnipotence of the royal prerogative; “his Majesty’s kingly

* Lives of the Chancellors. vol. i. p. 124.

resolutions were seated in the ark of his sacred breast, and it were a presumption of too high a nature for any Uzzah uncalled to touch it." His eulogy and defence of the fiscal extortions of Charles I, that "whatever had been drawn from the subject had, like vapours exhaled from the earth, returned to it in refreshing showers," has been borrowed by the modern panegyrists of taxes and national debt. Tonnage and poundage the Lord Keeper considered as part of the just perquisites of monarchs.* Finch was the consistent instrument of the King in the unconstitutional dissolution of this parliament, on the 5th May, 1640, immediately on its unaccommodating spirit being displayed in the bold opposition of Grimstone, Pym, Crew, Sir John Hotham, and other members. The conduct of this unjust Judge in the administration of equity, may be fairly estimated by his open and shameless avowal from the bench, that a resolution of the council-board should always be a sufficient ground for him to make a decree in Chancery! The exigencies of the King's affairs imposing upon him the necessity of calling a new Parliament in November following, the Commons immediately prepared to impeach the Lord Keeper of high treason. He made a flowery and whining speech in self-defence, but his conviction was immediate; and being summoned before the Lords the next day, he considered flight the soundest part of discretion; and it is singular, that after his escape into Holland, little is known of his subsequent life or placè of death.†

* Rushworth, vol. lii. p. 1114. *et. seq.* Cobbett's Parl. Hist. vol. ii. p. 528. Old Parl. Hist. vol. viii. p. 397.

† Rush. vol. iv. p. 129.—White Locke, p. 39.—Cobbett's Parl. Hist. vol. ii. p. 685.

On the exile of Finch, Sir Edward Littleton received the seals, 23rd January, 1640. He was another unworthy incumbent of the office. Having entered public life under the banner of liberty, the temptation of legal preferment was of course held out to him as a proselyte particularly worthy of conversion. His political prostitution is detailed in history. Being brought up entirely to the study and practice of the common law, he was by no means qualified for the Chancellorship. On the breach between the King and Parliament, Littleton sided with the latter; and on Charles's returning to York, he sent Lord Falkland to Hyde, to concert measures for taking the seal from the Lord Keeper. Hyde, however, previously conferred with Littleton on the impolicy of his choice of parties; and in the fright of losing his preferment, Littleton subsequently joined the King! it is a vulgar legal axiom, that possession is nine points of the law. In 1643, the Parliament voted, that if Littleton did not return with the seal to his court within fourteen days, he should lose his office, and all process subsequently sealed with the royal seal should be void. The King and his Chancellor were of opinion that as it was high treason to counterfeit the seal, the Commons would never carry into effect their intention of a new signet. The Parliament, however, directly ordered one, in deference to the popular regard for wax impressions. It was on this occasion that Prynne wrote his learned historical treatise on the Great Seal. In that tract the reader will find a great collection of curious antiquarian information, the quotation of which would not here be pertinent: this remark, however, is made without the slightest intention of depreciating the labours and learning of that extra-

ordinary man, whose impartial biography is yet a desideratum in English historical literature.*

The following extract from the votes and proceedings of the House of Commons, together with the reasons for making a new seal, presented by them to the Lords at a conference, July 4 and 5, anno. 1643, will not be uninteresting.

* The title, as follows, will sufficiently display the marrow of the work, and the fanatical use of Scripture at that time prevalent.

THE OPENING OF THE GREAT SEALE OF ENGLAND.

CONTAINING

Certain Brief Historicall and Legall Observations, touching the Originall, Antiquity, progresse, Use, Necessity, of the Great Seal of the Kings and Kingdoms of England, in respect of Charters, Patents, Writs, Commissions, and other Processe.

Together with the Kings, Kingdoms, Parliaments, severall Interests in and Power over the same, and over the Lord Chancellour, and the Lords and Keepers of it, both in regard of its New-making, Custody, Administration for the better execution of Publike Justice, the Republique necessary safety, and Utility.

Occasioned by the Over-rash Censures of such who inveigh against the Parliament, for Ordering a new Great Seale to be engraven, to supply the willful absence, defects, Abuses of the Old, unduely withdrawne and detained from them.

By WILLIAM PRYNNE, Utter Barrester, of Lincolns Inne.

Ether 8. 1.—Write ye also for the Jews, as liketh you, in the King's name, AND SEAL IT WITH THE KINGS RING: for the Writing which is written in the Kings name, AND SEALED WITH THE KINGS RING, may no man reverse.

It is this fifteenth day of September, Anno Dom. 1643. Ordered by the Committee of the House of Commons, concerning Printing, that this Treatise, intituled, The Opening of the Great Seale of England, be forthwith Printed by Michael Sparke, Senior.

JOHN WHITE.

LONDON.

Printed for MICHAEL SPARK Senior, 1644.

“ Resolved upon the Question. (June 14, & 26)

1. That the Great Seale of England ought to attend the Parliament.
2. That the absence of it hath been a cause of great mischiefes to the Common-wealth.
3. That a Remedy ought to be provided for these mischiefes.
4. That the proper remedy is, by making a New Great Seale.

The mischiefes occasioned by conveying away the Great Seale from the Parliament (represented to the Lords at a Conference, July 5, 1643,) are these :

1. It was secretly and unlawfully carried away by the Lord Keeper, contrary to the duty of his place ; who ought himselfe to have attended the Parliament, and not to have departed without leave ; nor should have been suffered to convey away the Great Seale, if his intentions had been discovered.

2. It hath been since taken away from him, and put into the hands of other dangerous and ill affected persons ; so as the Lord Keeper being sent unto by the Parliament for the sealing of some Writs, returned answer, That he could not Seale the same, because he had not the Seale in his keeping.

3. Those who have had the managing thereof have employed it to the hurt and destruction of the Kingdome sundry waies. By making new Sheriffes in an unusuall and unlawful manner, to be as so many Generals or Commanders of Forces raised against the Parliament. By issuing out illegal Commissions of Array, with other unlawfull Commissions, for the same purpose. By sending forth Proclamations against both Houses of Parliament, and severall Members thereof, proclaiming them Traitors, against the Privileges of Parliament and Lawes of the Land. By sealing Commissions of Oyer and Terminer to proceed against them, and other of His Majesties good Subjects adhearing to the Parliament, as Traitors. By sending Commissions into Ireland, to treat

a peace with the Rebels there, contrary to an Act of Parliament made this session. Besides, divers other dangerous and illegal acts have been passed under the Great Seale, since it was secretly conveyed away from the Parliament, whereby great calamities and mischiefes have ensued, to the Kingdomes prejudice.

The mischiefes proceeding through want of the Great Seale,

1. The termes have been adjourned ; the course of justice obstructed.

2. No originall Writs can be sued forth without going to Oxford ; which none who holds with the Parliament can doe, without perill of his life or liberty.

3. Proclamations in Parliament cannot issue out, for bringing in Delinquents impeached of High Treason or other Crimes, under paine of forfeiting their estates, according to the ancient course.

4. No Writs of Error can be brought in Parliament, to reverse erroneous judgements ; Nor Writs of Election sued out for choosing new Members, upon death or removall of any ; whereby the number of the Members is much lessened, and the Houses in time like to be dissolved, if speedy supply be not had, contrary to the very Act for Continuance of this Parliament.

5. Every other Court of Justice hath a peculiar Seale ; and the Parliament, the supremest Court of England, hath no other Seale but the great Seale of England ; which being kept away from it, hath now no Seale at all ; and therefore a new Seale ought to be made.

6. This Seale is *Clavis Regni* ; and therefore ought to be resident with the Parliament, (which is the representative body of the whole Kingdome) whiles it continues sitting ; the King, as well as the Kingdome, being alwaies legally present in it during its Session.”*

* The form of this seal, made by the order of the two houses of Parliament, was the same as that used by the King. The Commons on a previous

We have Littleton's own confession of his judicial incompetency, in the singular conversation recorded in Clarendon's life, where Littleton complains to Clarendon, (then Mr. Hyde,) that he had been taken away from the Court of Common Pleas, where he both understood the business and the persons he had to deal with, and transplanted into the Chancery, to the practice and Officers of which he was an entire stranger. Clarendon asserts that Charles would not trust the seal out of his own presence with his servant! In these times of civil commotion, however, few persons had time, money, or inclination for equity contention. The effect of national troubles and distress in diminishing litigation is well known: it is humourously lamented in a quarto tract, dated 1642, entitled, " St. Hilary's Tears, shed upon all Professions from the Judge to the Pettifogger, for want of a stirring Midsummer term this year of disasters, 1642, written by one of his Secretaries that had nothing else to do"—

" A Term so like a vacation—The prime Court, the "*Chancery* (wherein the Clerks had wont to dash their " Clients out of countenance with long dashes; the " Examiners to take the Depositions in Hyperboles, " and round about *Robinhood* circumstances with saids " and aforesaid, to enlarge the number of sheets: the " Registrars, &c." p. 1.

In the celebrated Petition and advice of both Houses of Parliament to the King, 2nd of June, 1642, with nineteen propositions, the third proposal was that "the Lord High Steward of England, Lord Chancellor or Keeper of the Great Seale, the two Chief Justices, and

occasion had ordered a great seal—a representation of the House of Commons (the members sitting) on one side, and the arms of England and Ireland on the other,

Chief Baron, &c. may always be chosen with the approbation of both Houses of Parliament." The King in his answer received the proposition "with just indignation," and the propositions in question he treated with "mockery and scorne." *

On the death of Littleton, 30th of August, 1645, the King delivered the Great Seal to Sir Richard Lane (who had been counsel for Strafford) Chief Baron of the Exchequer; but the new Lord Keeper had neither a court, suitors, nor salary: he appears however to have been honestly loyal, and consistently to have adhered to the broken fortunes of Charles.†

The Commons at first entrusted the custody of their new Seal to the two Speakers, to be used by the warrant of the two Houses. It was subsequently placed in the hands of two Lords and four Commoners, as Commissioners, who were invested with the authority of Keepers of the Great Seal, viz. Lords Manchester and Bullingbroke; Mr. Brown, Mr. St. John, Mr. Wild, and Mr. Prideaux. They sate in the Queen's Court, and sealed writs in considerable number.

In 1646, after the battle of Naseby and capture of Oxford, the Royal Seals taken there, were, by order of Parliament, destroyed. On the death of Lord Bulling-

* Husband's Collection, 1642. p. 308.

† When Lane left London, in 1643, to join the King at Oxford, he is said to have entrusted his friend Whitelocke with the goods and library in his chambers, Middle Temple. Wood broadly says that Lane's son afterwards applied to Whitelocke for their return, who would never own that he knew such a man as Sir R. Lane, and *appropriated* the property! This scandal receives some degree of corroboration from Whitelocke's receipts for his pension, printed by Peck, to which Whitelocke adds—"And I have likewise obtained some bookes of manuscripts, which were the Lord Littleton's, and some few booke's and MSS. which were Sir Richard Lane's, in all worth about £80."—*Ath. Ox.* vol. ii.—*Peck's Desiderata Curiosa.*

broke, the Parliament, on the 11th of August, voted Lord Salisbury, a Commissioner of their seal, in his place.

In October, the Commons voted that the Great Seal should be placed in the hands of three Commissioners; and proceeded to frame an ordinance, appointing Wandsworth, Beddingfield and John Bradshaw: the Lords, at a conference, added four more to the three named by the Commons, which caused a dispute between the two Houses, that ended in the appointment of the two speakers *pro tempore*. The Commons were evidently jealous lest so important an office should pass from under their own influence and controul. It is unnecessary to detail the squabbles which ultimately terminated in placing the seals in the hands of the Earl of Kent, Lord Grey of Werk, Sir Thomas Widdrington, and Whitelocke. The Commissioners received a fixed salary, to be paid out of the customs. The commission was subsequently revived for the hearing of causes in Chancery; and Dr. Bennet and Elkenhead were added.

There is ample evidence of the popular prejudice, against the evils of the defective state of the law, and that the law abuses were considered among the worst grievances of the nation.

As early as the year 1646 the Parliament was addressed, on the subject of Law Reform, in the following words.*

“ Yee know, the Laws of this nation are unworthy a free people, and deserve from first to last, to be considered, and seriously debated, and reduced to an agreement with common equity, and right reason, which ought to be the form

* Remonstrance of many thousand citizens and other freeborn people of England, to their own House of Commons; occasioned by the imprisonment of John Lilburn, 4to. without name or place.

and life of every government. *Magna Charta* itself being but a beggarly thing, containing many marks of intolerable bondage, and the laws that have been made since by Parliaments, have in many particulars, made our government much more oppressive and intolerable. The Norman way for ending of controversies, was much more abusive than the English way, yet the Conqueror contrary to his oath, introduced the Norman Laws, and his litigious and vexatious way amongst us; the like he did also for punishment of malefactors, controversies of all natures having before a quick and final dispatch in every hundred. He erected a trade of Judges and Lawyers, to sell justice and injustice at his own unconscionable rate, and in what time he pleased; the corruption whereof is yet remaining upon us, to our continual impoverishing and molestation; from which we thought you should have delivered us."

In a very valuable manuscript paper, formerly belonging to Colonel Saunders, of Derbyshire, colonel of a regiment of horse, written about the year 1647, among many other excellent proposals for the establishment of national prosperity, is the following—

"That the huge volumes of statute laws and ordinances, with the penalties therein imposed, as well corporeal as pecuniary, be well revised; and such only left in force, as shall be found fit for the common-wealth, especially that men's lives be more precious than formerly, and that lesser punishments than death, and more useful to the Public be found out for smaller offences: That all laws, writs, commissions, pleadings, and Records be in the English tongue; and that proceedings be reduced to a more certain charge, and a more expeditious way than formerly: That no fees at all be enacted of the People, in Courts of Justice; but that the public ministers of state be wholly maintained out of the public treasury."

By the order of the Commons all the Judges and law officers were enjoined not to respect or execute any process issued from Oxford, or elsewhere from the King and his itinerant establishment.* And the Cursitors of the Court of Chancery were particularly ordered not to send writs to Oxford for the royal seal. A new Registrar and other officers were also appointed by the Commons.† From the Journals we learn that the Master of the Rolls was directed to report to Parliament "what monies had been brought into the Chancery by order of that Court for these twenty years past:" and all that was proved "to be the monies of any malignants, or to be dead stock," the Parliament adopted as a sinking fund, in their then pecuniary emergencies.‡

No trace of any plan for the reform of the Court appears, excepting in the proceedings of the Parliament, 21st October, 1646, when a Committee was authorised "to regulate the proceedings of the Chancery, and the said Court;" || and the commissioners of the great seal were ordered "not to relieve any person in equity where the party had common law." On the 13th February, 1646, the Parliament appointed a Committee "to consider of the fees taken by the Registrar in the Court of Chancery, and to regulate them for the ease of the subject."§ An ordinance of the Commons, in 1647, substituted salaries in lieu of the former fees and perquisites of the Judges.

Such was the state of the courts of justice and the projected reforms to the period of Charles's violent death. This eventful and interesting period of English History, however seductive, must not tempt to any unnecessary

* Commons Journals. A. D. 1643. vol. iii. p. 320.

† Ibid. p. 326.

‡ Ibid. 346.

|| Ibid. vol. iv. p. 700.

§ vol. v. p. 87.

historical detail: it is difficult to prevent the expression of admiration of the English character and national conduct which must be felt by every one who has attentively and impartially studied the history of the times, and the biography of the extraordinary characters thrown up by the volcano of revolution. It is scarcely possible to resist the temptation of vindicating the calumniated reputation of the Republicans and the opponents of the Stuarts: but suffice it to observe that no country has produced men of more disinterested, wise, and courageous conduct: and although there is much to condemn, and still more to lament, in many of their political plans and proceedings, we ought ever to bear in mind, and allow for, the *provocation* under which they acted, the limited political knowledge of the period, and recollect that in the turmoil of revolution, violent and bad men will cast the vessel of the state into the whirlpool of extremes. It is a consoling effect of despotism that it begets a monster that devours itself; and they who lay the responsibility of revolutionary acts on the subjects of despotism, do but confound their first and secondary causes, and commit the gross mistake of using the word *cause* in lieu of *effect*. Luxuriant crops cannot be expected from the first operation of the ploughshare on the sterile waste.

The capital punishment of the unfortunate sovereign and the abolition of monarchy terminated the tragical contention between the King and the Parliament.—The decapitation of Charles I. has given birth to more bitter and rancorous party spirit, than any other event recorded in English history. Some of the most noble of British patriots assisted in that act, and subsequently justified it on the mature consideration of the motives and circumstances under which they acted.

They considered TYRANNICIDE a Roman virtue: they thought that if a government was limited by Law, the right of defending such limitation by Force was unquestionable; and that if the punishment of Death might be legally inflicted on the Subject who broke *one* law, demonstratively it might be awarded against the Monarch who violated *all* the laws. Legicide in the head of the state they considered the sufficient cause and justification of Regicide. The King whose wicked and corrupt Judges or deputies robbed, mutilated and murdered the People—who received into his own coffers the proceeds of tyranny and injustice in the benefit of the fines and judgments heaped upon the subject; *that* King must needs be presumed *particeps criminis*, a consenting party to persecution and oppression, and to incur *some* responsibility for the acts of his wicked and tyrannical representatives. If the King of England, in his *private* capacity, was amenable to the laws for offences against *one* person of the state, as all the constitutional writers affirm, the commonwealth men considered it a strange anomaly that the Chief Magistrate in his public capacity should not be responsible for overt acts of tyranny against the *Public* at large. If responsibility therefore be incurred, the *mode* and *degree* of punishment, they thought, might reasonably be extended to death, as in the case of private robbers and murderers. The higher the example the greater the necessity appeared for public exposure and punishment; and the mirror of history too clearly reflected the fact that *restored* and charter-bound Tyrants learned nothing and forgot nothing; and profited by experience no further than to fortify with greater care their future despotism, to remove by death their political enemies lulled into security by indemnities and amnesties, and then to repeat ten-fold

their former aggressions.* The death of a Tyrant is an act of justice and necessity, *if* capital punishment be lawful in the hands of man. Horace Walpole, an aristocrat, has placed the question in a syllogistic and ingenuous point of view—"The putting to death that Sovereign could by no means be the guilty part of their opposition. If a King deserves to be opposed by force of arms, he deserves death: If he reduces his subjects to that extremity, the blood spilt in that quarrel lies on him: the executing him afterwards is a mere formality!"†

If resistance and regicide are ever defensible they were a just visitation on Charles I., in whose name and under whose rule, grosser acts of injustice and cruel oppression were perpetrated, than in almost any preceding reign. The law of England says that the principal is bound by the acts of his agent. The unconstitutional suspension of Parliaments; the political persecutions in the courts of "justice," instituted by the servants of the crown; the star-chamber's judgments; the restrictions on the liberty of the Press; the forgeries of the University Statutes, by Laud, and the general

* Grievous and afflicting has been the recent proof of this fact in Europe, especially in the Peninsula. But the spirits of Porlier, Lacy, and Riego, have not offered up the sacrifice of their self-devotion in vain: "the Patriot's blood is the seed of Freedom;" the death of the political martyr is the tocsin of opposition to despotism, and his grave the future rallying point of the soldiers of liberty.

† Catalogue of Royal and Noble Authors.—See also Milton's *Tenure of Kings and Magistrates*, 1649, his reply to Salmasius, and his *Iconoclastes* in answer to the *Eikon Basilike*.—John Cook's *King Charles's Case*.—Bradbury's *Lawfulness of resisting Tyrants*.—Ludlow's *Tracts—Vindiciæ contra Tyrannos*, by Hubert Languet. A Tract, *Pro Populo Adversus Tyrannos*, 4to. 1689.—And the celebrated Manifesto against Cromwell, entitled—"Killing no Murder."

conduct of that overbearing ecclesiastic ; * the forgery of the Coronation Oath ; the usurpation of Ecclesiastical power, and the imposition of ceremonial worship, added to the invasion of liberty of conscience ; in brief, the impunity afforded by the Court to every violation of the laws, and the opposition to every demand of redress of grievance, and reform of corruptions—constitute such a climax of political iniquity as the annals of few countries record. All these acts of oppression may have been unwittingly and sincerely done, in the blindness of regal ignorance and bigotry, for the “good of the land,” but the motives of those who violate human laws are no justification or extenuation of crime. The violence of those who resent aggression is no excuse of the original act of provocation ; nor, because too severe a punishment may have been inflicted, is the nature of the crime at all altered ; in fact, all the consequences of vice, only aggravate and display its original enormity.

Nor are we to judge of the benefits of revolution from the first sweeping whirlwind of popular commotion. Unsuccessful as were the original efforts of the opponents of the Stuarts, the principles they implanted in the country, and the results that followed, atoned for whatever might have been *their* faults ; and although we are not always to judge of events by their apparent consequences, certain it is, that the conduct of the Commons of England, between the years 1640 and 1649, in its effect has truly entitled them to the gratitude of

* Laud was one of the most efficient managers of the Lawyers. Whitelocke (*Memorials*, p. 13.) writes, that his father, Judge Whitelocke, “did often and highly complain against this way, of sending to the Judges for their opinions before hand ; and said that if Bishop Laud went on in his way, he would kindle a flame in the Nation.”

posterity. Old Sir Thomas Smith * quaintly says that in political revolutions—"the judgment of the common people is according to the event and success; of them which be learned, according to the purpose of the doers, and the estate of the time when present." The sentiment has been paraphrased in the vulgar adage—

"Treason never prospers, what's the reason?
For when it prospers, none dare call it Treason."

These remarks may be considered as foreign to the subject, and perhaps are entirely uncalled for in the present inquiry. But as great and remarkable changes were effected in the Court of Chancery immediately on the establishment of the Commonwealth and Protectorate, they are reflections which naturally occur, and will in some degree elucidate the bold innovations subsequently attempted and partially carried into effect, with the view of reforming the principles and practice of English jurisprudence. We cannot wonder that the failure of repeated attempts to amend defective establishments and to punish corrupt officers should at length end in disaffection to the Institutions themselves, as it is a common error to confound the corruption of the administrators of office with the supposed defects of the office.

The conduct of the Judges induced the People to suspect that something in the nature of the Law itself, or a *malaria* in the courts of justice, corrupted the hearts of the whole profession. Andrew Marvel shews how the Stuarts acted, through the lawyers; and says that what standing armies, parliamentary bribes, oaths, and wickedness, could not effect "was more compendiously acted by twelve men in scarlet." And Clarendon

* The Commonwealth of England, 4to. 1602.

(before he wrote the History of the "Rebellion") in his speech at the bar of the house of Lords, 6th July, 1641, on the Commons' impeachment of the Judges, asserts that although it was formerly said that the twelve Judges were like the twelve Lions under the Throne of Solomon *six* of them (a moderate calculation) had then rendered the profession "contemptible and vile."

In a tract by William Cooke, published in 1642,* and dedicated to the Parliament, we find some remarks on the state of the law at that period. In the epistle dedicatory, he says that the clause in Magna Charta prohibiting the delay of justice is the "pearle that lies covered with superfluous ashes;" and that "the poore client breaks his teeth in cracking the shell to get the kernell." He then exclaims—"Oh for one good statute to cut-off at one blow all unnecessary delays in matters of Justice root and branch." He urges the Parliament to reform the general system of law, and prays for "some noble patrons of justice in every county that would look with eagle's eyes into poore men's sorrows and oppressions, and see that justice be done them for such fees as they are able to pay." Cooke writes, that causes "in *Chancery* though never so plaine, after a reference or two, and a generation or pedegree of orders, the controversie will become so intricate, that the merits of the cause being lost all the labour lyes in the managing of Reports and Orders: and sometimes equitie bears the sway, sometimes the common law; according as the partie Plaintiffe and Defendant play their game. I have insisted the more upon the abuse of Equity, as being the foulest ulcer in all our legall grievances, and but

* Vindication of the Professors and Profession of the Law, &c. by William Cooke. 4to. 1642.

an upstart of no antiquity." He rejoices that the seals are in the hands of commissioners, as he considers the weight of the Chancery too great for "the shoulder of one Atlas;" and reflects severely on the evils of Plaintiffs being allowed to file Bills without oath, and on many of the formalities of process which he pronounces inconsistent with reason and common sense. He describes the lawyers as turning "justice into wormwood," "a purse milking generation;" and that a crafty country attorney is as pernicious in his neighbourhood as a large garrison raising contributions around it. He asks, who were the persons who justified the levying of ship-money? and answers—"the Judges: what were they? thieves, *cum privilegio Regiæ Majestatis*, who bought justice by wholesale, and sold it by retails." He unreservedly declares that his profession will never reform the laws, that they invent subtleties to evade them, and delight in obscurity that they may gain by interpretation. "The Reformation of Courts of Justice is a worke of absolute necessity; without it, though the sword of the Lord return into the scabbard you shall have no peace: but if you have many Lawyers, they will never suffer any effectual law to pass for this purpose; because they get more by the corruption and delaies of the law, than by the law itself."

The Statute book was but little enlarged by Charles, in consequence of the long intermission of Parliaments and the political disturbances in his reign. Fifty-one Public acts only were added. The Journals of the House of Commons record some feeble attempts at a consolidation of the statutes; which were indeed as feebly carried into effect by the statute 3 Charles I. c. iv. "An Act for continuance and repeal of divers statutes."

In 1640 the Commons succeeded in putting down the Court of Star Chamber, and the Royal assent was given (because it could not be safely withholden) to the statute 16 Charles I. c. x.—“ An act for regulating of the Privy Council, and for taking away the Court commonly called the Star-Chamber.” In this infamous judicial Inquisition the Chancellors had been long the most active and servile agents; and its suppression certainly reduced their political and arbitrary powers.

The contemporary Reporters were as follows :—

CHARLES.—1625.

Aleyn (K. B.), 22 to 24	Ley (K. B. C. P. Exch. and Court of Wards), 1 to 4
Bendloe (K. B. C. P. and Exch.), 1 to 3	Littleton (C. P. and Exch.) 2 to 7
Bulstrode (K. B.), 1 to 14	March (K. B. and C. P.), 15 to 18
Clayton (Pleas of As. York), 7 to 24	Nelson (<i>Chancery</i>), 1 to 24
Croke (K. B. and C. P.), 1 to 16	Noy (K. B. & C. P.), 1 to 24
Godbolt (<i>all the Courts</i>), 1 to 13	Palmer (K. B. and C. P.), 1 to 4
Hetley (C. P.), 3 to 7	Popham (<i>K. B. C. P. and Chan.</i>), 1 to 2
Hutton (C. P.), 1 to 14	<i>Reports in Chancery</i> , 1 to 24
W. Jones (K. B. C. P.), 1 to 16	Style (K. B.), 21 24
Latch (K. B.), 1 to 3	Tothill (<i>Chancery</i>), 1 to 21

CHAPTER VIII.

OF THE COURT OF CHANCERY,
DURING THE COMMONWEALTH AND PROTECTORATE,
A. D. 1649 TO 1659.

THE Chancery was looked on as a great grievance, one of the greatest in the nation.—For delatories, chargeableness, and a facultie of letting bloud the people in the purse-veine, even to their utter perishing and undoing, as by what was spoken and affirmed at the debate, that Court may compare (if not surpasse) any Court in the world: It was confidently affirmed by knowing Gentlemen of worth, that there were depending in that Court *twenty-three thousand causes*; that some of them had been depending five, some ten, some twentie, some thirtie yeares and more: that there had been spent in Causes many hundred, nay thousands of pounds, to the ruine, nay utter undoing of many families: that no ship almost (to wit, Cause) that sayled in the Sea of the Law, but first or last putting into that Port, and if they made any considerable stay there, they suffered so much losse, as the Remedy was as bad as the Disease; that what was ordered one day was contradicted the next, so as in some causes there had been five hundred orders, and farre more as some affirmed.—*An exact Relation of the Proceedings, &c. of the late Parliament, dissolved Dec. 12th, 1653, by L. D. a Member of the late Parliament.* 4to. London. 1654.

It would be the last degree of unfairness to pass judgment upon the views of men in a former age by the standard of our own times, when circumstances are completely altered. Under the pretext of Equity, no injustice was too gross not to be committed, and the man who bribed highest was sure of gaining his cause. It is perfectly evident then, that the Court of Chancery at that period, and the Court of Chancery now, agree only in name: hence the Historians, who ridicule the Convention upon the ground of their design to abolish this court, as if it had been the same with that now known under the same denomination, are either unacquainted with the spirit of that age, or guilty of an imposition by the abuse of words. *Brodie. vol. iv. p. 358.*

ON the 9th of January, 1648, the Commons voted the destruction of the Great Seal, and that a new one should

be forthwith made. It was ordered that a map of England, Ireland, Jersey, and Guernsey, and the arms of the two former countries, should be engraved on one side of the New Seal, with the inscription—*The Great Seal of England*, 1648 : On the reverse, a sculpture of the House of Commons sitting ; the motto—*In the first year of Freedom, by God's blessing restored*, 1648.* The sum of £60. was voted to defray the expence of the new apparatus of justice, which was afterwards increased to £200. The Republicans were certainly far from that contempt of form which has been vulgarly charged against them. Whitelocke says, that these graphic conceits were partly the “fancy” of the famous Henry Martin.†

In the following February, the Commons ordered the destruction of the old Seal, which was brought by the Seal-bearer into the house, and in the presence of the Commons broken in pieces : the new Great Seal of England was established by the immediate passing of an act.‡ Another bill was introduced forthwith to constitute Widdrington and Whitelocke Commissioners, the former of whom ultimately excused himself. Whitelocke appears to have attempted to escape the office. In the objections to his nomination delivered by him to the Commons, we gain some information of the then state of the Chancery. “The business of the Chancery, is “certainly more than of any other Court, the trouble “must needs be the greater, and the burden the heavier, “too heavy for me to bear. It is trouble enough, and no “easy duty for one man to attend the service of this
• “House, it is more than doubled by being a Commis-

* Comm Journ. vol. 6. p. 116.

† Whitelocke, p. 362.

‡ Ibid. p. 372.

“sioner of the Great Seal.” He states that his third objection was “the difficulty of the employment.” He says “the Judges of the Common Law have certain “rules to guide them ; a Keeper of the seals hath nothing “but his own conscience to direct him, and that is oft- “times deceitful. The proceedings in Chancery are “*secundum arbitrium boni viri*, and this arbitrium differs as much in several men, as their countenances “differ. That which is right in one man’s eyes, is wrong “in another’s, nothing is more difficult than to satisfy “in judgment.”* The commands however of the Commons prevailed against the scruples of Whitelocke, who with Keble and Lisle were appointed Commissioners, *quam diu se bene gesserint*. After some preliminary discussion whether the imposing stile and addition of *Lords* Commissioners should be conferred on them, a short act was passed appointing them to all the usual and lawful powers and trusts of the Great Seal. Whitelocke soon satisfied his conscience (an accommodating one,) and apologizes for his acceptance of the office “because he was already deeply engaged with this party ; that the business to be undertaken by him was the execution of law and justice, without which men could not live one by another, a thing of absolute necessity to be done.”

In 1649, Whitelocke and Keble, in the exercise of their official duty as Lords Commissioners, drew up and published, with the assistance of Lenthall, Master of the Rolls, a body of Orders for the temporary regulation and reformation of the practice of Chancery. From the title of the collection it appears to have been preparatory to a formal review and consolidation of the standing orders of the court. It is not inserted in the

* Ibid. p. 373.

Registrar's book, but may be found in the appendix to Mr. Beame's collection. The defective state of the practice is evident in the proposals for correction and improvement, which in many respects are practical and decisive. They are the basis of the subsequent orders of Lord Clarendon, the alteration, adoption, and repeal of which, in the latter orders, may be seen on a comparison of the two.*

It appears from an entry in Whitelocke that as early as August, 1649, the Parliament commenced the reform of the Law, and particularly of Equity practice—"The House being adjourned, Mr. Speaker, Commissioner Keble, Mr. Chute, Mr. Adams, Mr. Steel, and Mr. Whitelocke, by appointment met in the morning at Mr. Attorney General's, where they conferred together about the making new rules for Reformation of the proceedings in *Chancery*, and agreed upon some general points, which they referred to some of the company to draw up into form."†

In the November following, it appears from Whitelocke, that a new attempt was made in Parliament to prevent practising lawyers from sitting in the House of Commons; or that in case of their return they should give up their practice *pro tempore*. Whitelocke‡ re-

* The original printed collection is extremely scarce. It was published in 1649, under the "imprimatur" of "Hen. Scobell, Cleric. Parliament."
 "A Collection of such of the Orders heretofore used in Chancery, with such alterations and additions thereunto, as the Right Honorable the Lords Commissioners, by and with the advice of the Master of the Rolls, have thought fit at present (in order to a further reformation now under their Lordship's consideration) to ordain and publish for reforming abuses, &c." 12mo. 1649.

† Whitelocke, p. 405.

‡ Whitelocke very quaintly prefaces this speech by the following paragraph in the Memorials—"In the Parliament were many debates about

cords a very elaborate speech of his own in defence of the profession, and its right to sit in Parliament. In this speech the Lord Commissioner is not very consistent: he affirms the perfectibility of the law and lawyers; and asserts that it is the free constitution of the kingdom, its great trade, and the laws so favourable to the distribution of property by will, which occasion so much litigation. He contends that if lawyers were to be prevented practising during their sitting in Parliament, it had better be enacted "that Merchants shall forbear their trading, Physicians from visiting their patients, and country gentlemen forbear to sell their corn and wool, whilst they sit as members of the House; which hath the same reason as to debar Lawyers from their practice."* The editors of the Parliamentary History "presume the foregoing arguments put a stop to this attack upon the Gentlemen of the long robe, for we hear no more of it."†

Nor was the reform of the law exclusively the consideration of the legislature. Under the date of the 23rd of May, 1650; Whitelocke mentions that at a public meeting of Attornies and Law-officers certain proposals were agreed upon, to be presented to the Parliament, "for reformation of the proceedings of law, whereby they hoped, that the Clyent would be much secured, the Creditor and Purchaser fully provided for, the charge of

Reformation of things, according to the late Petitions, and amongst the rest of particulars, there was a great Peek against the Lawyers. Inso-much as it was again said, as it had been formerly,—*That it was not fit for Lawyers who were members of Parliament (if any Lawyers ought to be of the Parliament) to plead, or practise as Lawyers, during the time that they sate as members of the Parliament, which gave occasion to one of the members of that profession, to speak as followeth,*" &c.

* Ibid, 416. † Old Parl. Hist. vol. xix. p. 235.

Suits greatly abated, and the processe of Law much shortened.”*

On the 22nd of October a resolution appears on the Journals of the House of Commons—“That this House do take into consideration the regulation of the proceedings of the Laws, and of the Delays and Charges in Courts of Justice; as also of all exorbitant fees, and other grievances, for the better ease and benefit of the People; on Friday morning next, the first businesse; and nothing to intervene: And that Mr. Speaker do put the House in mind thereof: And that all former Orders and References, made by the House, touching these particulars, be searched out, and prepared, that the House may have an account thereof, at that time.”† The quick and efficient steps taken by the Commons on this important subject are worthy of full citation from the Journals of the 25th, only three days after the above resolution.‡

“The House, according to former Order, took into Debate the Regulation of Proceedings in Law, and Delays and Charges in Courts of Justice; as also of exorbitant Fees, and other Grievances, &c.

Resolved, That all the Books of the Laws be put into *English*: And that all Writs, Process, and Returns thereof, and all Patents, Commissions, Indictments, Inquisitions, Certificates, Judgments, and Records whatsoever, and all other Rules and Proceedings in Courts of Justice within the Commonwealth of England, shall be in the *English* Tongue, only; and not in *Latin* or *French*, or any other Language than *English*.

Resolved, That the same be written in an ordinary, legible

* Whitelocke, p. 439.

† Comm. Journ. vol. vi. p. 489.

‡ *Ibid.* p. 487.

hand; and not in any Court Hand: And that it be referred to a Committee, to bring in an Act upon these Votes.

Resolved, That Mr. *Miles Corbet* do bring in an Act, on Wednesday next, for taking away the superstitious Observation of *All Saint's Day*, and other Days in Term, not Juridical; and making them Court Days, and for making the Fifth Day of November no Court Day.

Resolved, That it be referred to a Committee, to consider of the Salaries and the Fees of Judges and Officers; and what Offices or Fees are fit to be retrenched; and to bring in one or more Bills to the House, touching the same.

Resolved, That it be referred to the same Committee, to consider of the Delays, and unnecessary Charges, in Proceedings in the Law; and to present one or more Bills to the House, for Redress thereof.

Resolved, That this Committee hath Power to pursue the Direction of an Order of the Seventh of November, 1649, touching Juries; and to report their Opinion to the House; and likewise what Laws are fit to be repealed.

Resolved, That the Bill for Registering of Conveyances, &c. be read the Second time, on This-day-sevennight.

Resolved, That Friday in every Week be set apart till Eleven of the clock, to receive Reports from this Committee; viz. to this Committee following: Sir Henry Vane, Lord Commissioner Whitelocke, Lord Commissioner Lisle, Mr. Attorney General, Mr. Solicitor, Mr. Hill, Mr. Love, Mr. Trenchard, Mr. Blagrove, Mr. Carew, Mr. Lechmere, Mr. Say, Major General Harrison, Mr. Corbet, Mr. Garland, Sir Tho. Widdrington, Mr. Scott, Colonel Jones, Mr. Strickland, Mr. Thomas Challoner, Mr. Dove, Mr. Cowley, Colonel Marten, Mr. John Corbett, Sir Henry Mildmay, Mr. Raleigh, Alderman Allen, Sir Michael Livesey: and all that come to have Voices: And this Committee are to meet on Tuesday at Two of clock in the Afternoon, in the Speaker's chamber; and so *de die in diem*: And Colonel Mar-

ten and Mr. Strickland are to take care of it : With Power to this Committee to send for Persons, Papers : And that they do give an Account to the House of their Proceedings on This-day-fortnight.

Resolved, That the Lord Commissioner Whitelocke, and the Lord Commissioner Lisle, Mr. Attorney General, Mr. Solicitor General, Mr. Sergeant Widdrington, Mr. Hill, and the rest of the Members of the Long Robe, be enjoined to give their constant Attendance on this Committee."

These *resolutions* were followed up by *acts*. On the 1st of November the Lords Commissioners were instructed to prepare a bill, "for turning the books of the Law and all Process and Proceedings at Law into English." On the 8th the bill was reported, read twice, and sent down to the Committee for regulating the Law ; ordered to be brought in that day se'nnight, and Whitelocke and Lisle charged with the special preparation of it.*—On the 22nd, it was passed, ordered to be printed and published, and the Lords Commissioners instructed to issue a certiorari to the Clerk of the Parliament to transmit and disperse copies in the several counties of the Commonwealth.† Whitelocke says, that there was on that day "a very long and smart debate in which some spake in derogation and dishonour of the laws of England." He inserts the report of a prolix and pedantic oration of his own in defence of the old law. It is singular to observe his common-sense struggling and smothered in his idolatry of antiquity ; ‡ and after ela-

* Comm. Journ. 490-492.—Whitelocke, p. 459.

† Comm Journ. vol. vi. p. 500.

‡ I shall not deny but that some Monks in elder times, and some Clerks and officers might have a cunning, for their private honour and profit, to keep up a *mystery*, to have as much as they could of our laws to be in a

borately stating the arguments *pro* and *con*, he seems to give a casting vote in favour of the bill because "*Moses* read all the Laws openly before the people in their mother-tongue." He complains that "some military persons vent nothing but scoffs and invective against our laws, and threats to take it away."

On the 13th of December, certain votes of the Committee for regulating the proceeding of the Law, were reported to the House by Mr. Martin, as follows:—That in Assurances of Land, Common Recoveries and Fines should be taken away. That a Deed inrolled in the County where the Land lies should be as effectual in the law, as a Fine and Recovery, or either of them, according to the agreement of the Parties expressed in the same deed. That in personal and mixed actions, the writ of *capias* upon mesne process be wholly taken away: that instead of the *capias*, use should be made of an original Writ, expressing the name of the Plaintiff and the Cause of Action: that the original writ of Summons should issue out of that Court where the Plaintiff lays his Action: that the Summons should issue out under the Seal of that Court, to be kept by such Officer as the Judges there might appoint. That before any Writ issues the Plaintiff put in sufficient security to prosecute his suit;

kind of mystery to the vulgar, to be the less understood by them. But the Councillors at law and Judges can have no advantage by it; but perhaps it would be found, that the Law being in *English*, and generally more understood, yet not sufficiently, would occasion more suits. And possibly there may be something of the like nature as to the *Court hand*; yet if more common hands were used in our Law writings, they would be more subject to change, as the English and other languages are, but not the Latine. Surely the French tongue used in our Reports and Law Books, deserves not to be so enviously decried as it is by Polydore, Allott, Daniel, Hottman, Cowel, and other Censurers." *Whitelocke's Memorials*. p. 460.

and to answer costs in case he fails to prove his action. That the fee called *Damna Clericorum*, or damage clear, be taken away, &c.* On the 17th of January an act was passed for carrying into effect the latter resolution. The officers in place, profiting under the old system, of course vigorously petitioned against and opposed the proposed reformation : they were patiently heard by the Parliamentary committee, who doubtless were previously aware that power was never surrendered without a struggle for its preservation, nor emoluments abandoned without every possible endeavour to uphold them.†

Numerous publications at this period, exposed the corrupt state of the law, and the necessity of its reformation, which probably particularly urged the Parliament to undertake the cleansing of the Augean stable. It is asked—"Why are there so many delays, turnings and windings in the laws of England? why is English law a meander of intricacies, where a man must have contrary winds before he can arrive at his desired port? Why are so many men destroyed for want of a *formality* and punctilio in law? And who would not blush to behold seemingly grave and learned sages to prefer a *letter*, syllable or word, before the weight and *merit* of a cause? Why do the issue of most Law-suits depend upon *precedents* rather than the *rule*, especially the rule

* Comm. Journ. vol. vi. p. 509.—The point and brevity of the Statute carrying these resolutions into effect, shews the ability of the Commonwealth Legislators. "Be it enacted by this present Parliament, and by the authority of the same, that all fees called *Damage Cleere* or *Damna Clericorum*, be from and after the first day of January, 1650, utterly forborn and taken away; and that no such fee, sum of money, or any thing in lieu thereof, be from and after the said day demanded or received by any officer, Minister, or other person belonging to any court of Justice within this Commonwealth." *Scobell's Acts*, p. 151.

† Parl. Hist. vol. xx. p. 84. Macaulay's Hist. vol. v. p. 80.

of *reason*? Why are men's lives forfeited by the *law* upon light and trivial grounds? Why do some *laws* exceed the *offence*? and on the contrary other offences are of greater demerit than the penalty of the law? Why is the law kept in an unknown tongue, and the nicety of it rather countenanced than corrected? Why are not courts rejourned into every *County*, that the People may have right at their own doors, and such tedious journeyings may be prevented?—These different writers confess that it is difficult to reform the corrupt system because so many are *concerned* in its continuance; the corrupt interest of the Lawyers, the temptation to advance themselves, prevailing against their consideration of the Public: "they will not deny themselves." The "rise and potency of the Lawyers," is ably traced by Warre to two causes—"the unknown-ness of the law, and the Quarterly Terms at Westminster." The Conquest, by the introduction of the Norman technical phraseology and fallacies, prevented men from being their own advocates, and prostrated the whole nation before the shrine of the Lawyer, whose Oracle was popular, because it resolved *doubts*. When the fiction of law became established, that Justice could only reside and be visited at *Westminster*, the local courts were overturned, and parties could not get their controversies decided by their neighbours, but were obliged to have *Agents*† to conduct their suits in the metropolis. Men

• Warre.

† From the letter of the statute 28 Edw. i. c. 11. it is evident that the parents, friends, or neighbours of parties pleaded for them without the help of a lawyer.—King James, in a speech in the Star-chamber, appears to advocate the old custom: he says, "in countreys where the formality of the law hath no place, as in Denmark, all their state is governed only by a written law, there is no advocate or proctor admitted to plead,

of talent and subtlety attended the Courts in Term times, and represented their simple country Clients, putting up in the *Inns* of Court, and speedily becoming a distinct and well ordered *Society* found the niceties of the law sweeter than the plough: they soon measured causes by their own interests, and became interested in increasing differences and prolonging litigation. Warre asks, "If there is such a thing as *right* in the world, let us have it, *sine fuco*: why is it delayed, or denied, or varnished over with guilty words? Why comes it not forth in its own dress? Why doth it not put off *law*, and put on *reason*, the mother of all just laws? Why is it not ashamed of its long and mercenarie *traine*? Why can we not ask it and receive it *ourselves*, but must have it handed to us by others?"

One pamphlet, published in 1650,* contains a pointed exposition of the existing evils of the Court of Chancery, and some excellent practical suggestions of reform. The author is evidently an accomplished and practical lawyer; he does not contend for the abolition of the Court: he acknowledges its great utility to the nation, for discovery of fraud; circumvention; breach of trust; secreting and concealing of Estates, Evidences, writ-

"onely the parties themselves plead their own cause, and then a man
 "stands up and pleads the law, and there is an end; for the very Law-
 "Book itself is their only Judge; happy were all Kingdoms, if they could
 "be so: but here curious wits, various conceits, different actions, and
 "variety of examples breed questions in law."

* Proposals concerning the Chancery, wherein is set forth the desires of divers well affected persons, for the regulating of the High Court of Chancery, and the proceedings there, and abolishing of several fees, offices, and officers, thereunto belonging. Tendered to the consideration of the Honourable Committee for Regulating Courts of Justice, and all others whom it may concern, &c. published for obteynning a just settlement and regulation of the said Court. London, 4to. 1650.

ings; for preservation of the testimony of aged witnesses; for correcting the rigidity of the common-law, and for various important public ends. He contends that the commonwealth could not well subsist without it—

“ But the Court, and the end for which it was originally established, is so corrupted and abused, by multiplicity of Offices and Officers, the great and vast summes of money given for places and offices, contrary to the Statute of 2 Ed. VI.; the exactions of great Fees, and the great delaies and obstructions of the ordinary course of proceedings, principally by the sale of offices and places, supplied by corrupt and ignorant Ministers and Officers; that by length of time, and want of redresse, the Chancery is grown so insupportable to the Commonwealth, so burthensome to the free-born Subjects of this Realme, and so advantageous to the true labourers therein; that the subject becomes weary of it, and inferior Clarks and Officers, for want of common right in a due returne of their unwearied paines (the fruit thereof being reaped by those *Droanes* who purchase their labours, and their owne ease and advantage) that such painfull industrious men are discouraged to continue their service and attendance, and this Court of Chancery, which was so anciently famous, and erected to so good an end, is like to become a mere Monopolie to cozen the Subjects of their Monies.”

The proposed amendments and reform were—first, that no office should be bought or sold, and merit only entitle a man to preferment: secondly, that the fees be abated and reduced, and all unnecessary offices abolished: thirdly, that the unnecessary length of Equity pleadings which only perplex the Counsel and the Court, and cause expence and delay to the suitor, be curtailed:

fourthly, that the unnecessary multiplication of Orders, References, and Bills of review be abolished: fifthly, that the excessive fees of Counsel and Solicitors* be reasonably reduced; and only those persons who are well qualified by their knowledge of the law, allowed to practice in Chancery: sixthly, that the solicitors and officers of the court serve a certain apprenticeship, and be properly certificated. A series of nineteen propositions then follow for regulating the practice of the Court; for insuring the integrity of the officers; for diminishing the *time* and *expence* of suits; and for establishing moderate and certain tables of charges. A schedule and tabular view of fees and charges is given at the end of the pamphlet stating how little the deputies or real labourers get; what will content the working clerks, and how much will be saved to the suitors and the commonwealth by abolishing the sinecures and suspending all officers performing the duties of their offices by deputy.

During this controversy and parliamentary inquiry many of the deputies and under Clerks in the Chancery offices "turned King's evidence," and impeached their principals for the abuses and corruptions of office. In many instances they volunteered or undertook to perform all the labours of their respective employments at a reduction of seventy-five per cent. of the customary fees.

On the 28th of December, 1651, the Commons appointed a Committee for the reform of the law, to select

* Commissions were formerly held for inquiry into fees, which empannelled juries, always including many experienced Attornies and Solicitors. Formerly Attornies took an oath of office not to increase ancient fees. (see Rules and Orders for the Court of Common Pleas, Michaelmas Term, 1654) But this oath was modified by the statute 2 Geo. ii. c. 32.

and employ such persons, "out of the House," as they might judge fit "to take into consideration what inconveniences there are in the Law, and how the mischiefs that grow from the delays, the chargeableness, and the irregularities in the proceedings in the law, may be prevented, and the speediest way to reform the same; and to present their opinions to such committee, as the Parliament shall appoint."* On the 9th of January following, the Lord Commissioner Lisle reported to the House a list of the several persons nominated by the Committee for the above purposes, at the head of which was the name of Sir Matthew Hale. On the 14th the debate was resumed, and it was resolved that the intended committee should consist of twenty-one persons. On the 17th the number was completed; † and a quorum of seven of them was empowered to sit immediately on the subject of their appointment, with liberty "to send for any persons whom they shall think fit to confer and advise with in this business, and to send for persons that keep the records, to attend them with the records, as often as they shall have occasion to make use of them, for this service." It was then resolved (*hinc illæ lacrymæ*) "that the House, heretofore called the Lord's House, be the place appointed for the sitting on this service; with power to adjourn from time to time, and from place to place." The committee of revenue, by a special vote, was authorised to defray the expenses

* Matthew Hales, William Steel recorder of London, Charles George Cock, Thomas Manby, John Sadler, Esquires, Colonel Thomas Blunt, Sir Henry Blunt, Josiah Berners, Esq., Major General Desborow, Samuel Moyer, Esq., Colonel Matthew Thomlinson, John Fountaine, Esq., Alderman John Foulk, Mr. Hugh Peters, Major Wm. Packer, Sir William Roberts, Mr. W. Methwold, Mr. John Maunsell, Mr. John Rushworth, Mr. John Sparrow, Jun., Sir Anthony Ashley Cooper.

† Comm. Journ. vol. vii. p. 58.

of the commission.* Oldmixon says—"This Committee met several times, and desired the Judges of the several Courts to return to them a list of the officers, and what fees they receive, and what work they do for them. A project of excellent use, and fit for the wisdom of the nation to bring to perfection."†

On the 19th of March, Whitelocke reported from the Committee appointed to receive what should be presented to them by the above mentioned committee, "an act touching Marriages, and the Registering thereof; and also touching Births and Burials." By the division on this bill, it is evident that the different projected reforms and improvements, met with a grave and serious consideration; and were not adopted with that "ruthless acclamation for destruction," which has been ignorantly alledged against the Parliamentary party. An addition was made to the Commons' Committee of several eminent lawyers and statesmen, and it was resolved that the Parliamentary Committee should meet every Thursday to receive the Reports of the Committee of inquiry, "nothing to intervene."‡

On the 25th of March, the Lord Commissioner Whitelocke reported to the Commons draughts of acts for abolishing Fines on Bills, Declarations, and original Writs; for the more speedy recovery of Rents, and for the abolition of many customary oaths.¶

On the 19th of January, 1652, the Commons resumed the subject of the Law committee, and appointed the Bill containing the new system of Law to be read on the following day; which was accordingly done, and occupied the whole morning. On the 21st of the same month, they

* Ibid. pp. 59, 67, 71, 73.

† History, vol. ii. p. 402.

‡ Comm. Journ. p. 107.

¶ Ibid. p. 110.

ordered three hundred copies to be printed and distributed among the members.*

On the 12th of July, 1653, the consideration of the subject was resumed, and the further labours of the out-door committee, and their additional draughts of acts were ordered to be printed and circulated.† On the 20th they were again proceeded with. On the 17th and two following days the debate was continued.

After this time we trace little progress or further attention in the improvement of the general system of Law, contemplated by the Parliament and the committees whose labours have just been noticed. What other attempts were made it will be subsequently seen were confined to the reform of the court of CHANCERY. Probably the exigencies of the country, and the overwhelming pressure of other abuses and national dissensions, prevented that constant and successful attention to the state of the law and jurisprudence, which under other circumstances would have been continued. Cromwell was plotting and maturing his usurpation, and in the pursuit of his own personal objects, he probably feared the enmity that the projected law-reform would infallibly create in the minds of the lawyers, or wished that the learned body should just perceive how entirely they lay at his mercy. And no doubt the Lawyers themselves were not very quiet or satisfied spectators of the meditated demolition of their power and living. Ludlow corroborates this latter reason; and in narrating the history of this period, says—"In the mean time the Reformation of the Law went on but slowly, it being the interest of the Lawyers to preserve the lives, liberties and estates of the whole nation in their own hands. So that upon the debate of registering

* Ibid. p. 250.

† Ibid. p. 324.

" deeds in each County, for want of which, within a
 " certain period fixed after the sale, such sales should be
 " void, and being so registered, that land should not be
 " subject to any incumbrance, this word '*incumbrance*'
 " was so managed by the Lawyers, that it took up three
 " months' time before it could be ascertained by the
 " Committee."*

Fortunately the labours of this celebrated committee have not been entirely lost to the nation, but still exist in the printed copies of the acts proposed by them, and will ever remain an imperishable vindication of the insulted memories of the Republican reformers. Many of their most valuable and important propositions have been subsequently enacted by after Parliaments.

They comprehend some excellent amendments on the administration and distribution of the estates of intestates; the more easy recovery of rents; the prevention of fraudulent conveyances; of offences *contra bonos mores*; the registry of conveyances and wills. Eighty-nine sections for the regulation and improvement of the Common-law courts and County judicature comprize some most admirable improvements, many of which have been subsequently adopted into our Statute book, viz. against collateral warranties, that creditors may compel debtors to discover their effects in bankrupt and insolvent acts, that corn in rick may be distrained for rent, that notice be given before sales on distresses for rent, and against general occupancy of estates *pour auter vie*. Undeniably there were many inconsistencies and imperfections in these draughts, but certainly there is no want of modern examples of that inconsistent legislation, which one year hears in committee an *ex parte* class of interested persons, another year the opposite party, and

* Ladbroke's Memoirs, fol. ed. 1751. p. 163.

enacts statutes diametrically opposite in principle and effect.

The following are the titles of the Draughts of Acts presented by the Committee of the Law to the Parliament:—

1. For taking away Fines upon Bills, Declarations and Original Writs.

2. An Act touching Marriages and the Registering thereof, and also touching Births and Burials.

3. An Act against Customary Oaths.

4. For taking away Common Recoveries, and the unnecessary charge of Fines, and to pass and charge Lands entailed as Lands in Fee-simple.

5. For ascertaining of Arbitrary Fines upon Descent and Alienation of Copy-holds of Inheritance.

6. For the more speedy recovery of Rents.

7. For the better regulating of Pleaders and their Fees.

8. For the more speedy and easy Recovery of Debts and Damages not exceeding the sum of Four Pounds.

9. For the further Declaration and Prevention of fraudulent Contracts and Conveyances.

10. Against the Sale of Offices.

11. For the Recovery of Debts owing by Corporations.

12. Against Challenges, Duels, and all Provocations whatever.

13. To make Debts assignable.

14. To prevent solicitation of Judges, Bribery, Extortion, Charge of Motions, and for Restriction of Pleaders.

15. For the better putting in execution the laws contra bonos mores.

16. For County Registers, Wills and Administrators; and for preventing Inconvenience, Delay, Charge and Irregularity, in Chancery and Common Law, (as well in Common Pleas as criminal and capital Causes,) and for settling County Judicatures, Guardians of Orphans, Courts of Appeal,

County Treasurers, and Work-houses, with Tables of Fees and short forms of Declarations.

Such were the magnificent objects and invaluable labours of the Committee in a period not exceeding *three* years; and such the brevity and wisdom of their intended statutes, all the detail of which is comprised in one hundred and twenty quarto pages! It is well observed by Oldmixon that "the very title of these Acts shews how worthy they were of the wisdom of the nation, and it is astonishing that the same art which obstructed the Reform of the Practice of the Law, almost fourscore years ago, should have still succeeded in the like obstruction from that time to this (1730). It does by no means do honour to the Profession which is charged with it."

But to resume the more particular history of the reform of the Court of Chancery, which was a zealous object of this Parliament distinct from the more general scheme for the amendment of the Law above detailed, it will be necessary to return again to the examination of the Journals of the Commons. A minute inquiry is here necessary, into what was intended, and what actually done, because the supposed total abolition of the Court of Equity is a vulgar charge against the Commons, which has never yet been fully or impartially examined.

On the 3rd of August, 1653, we find a resolution entered in the Journals* for the "consideration of the business of the Court of Chancery" on the following day. Accordingly on the 5th, the discussion was resumed. From Whitelocke† it appears that it was a long debate, which lasted two days; but it is singular that neither he nor any other contemporary historian, has given any report or general account of the debates and arguments on the

* Comm. Journ. vol. vii. p. 396.

† Whitelocke, p. 343.

subject.—The debate terminated in a vote “That the High Court of Chancery of England shall be forthwith taken away, and that a bill be brought in for that purpose.” From the narrative of the author of the “Exact Relation of the Proceedings of the Parliament,” quoted in the motto preceding this chapter, it appears that it did not pass “without great debate;” but that the vote gave entire satisfaction to the Public.* It was further resolved that the Committee of the Law prepare a bill for the purpose, and determine how the causes then depending in Chancery, should be disposed of; and also bring in a bill for the determination of the future Equity causes and questions. It must be observed that these were only *votes* of resolutions, and from the scanty information afforded by the journals, it is difficult correctly to ascertain what abolition or substitution was really enacted or meditated. There were two printed Papers at this time delivered to the Members, the insertion of which, though rather elaborate documents, will afford some important and authentic information on the intentions of the Parliament, especially as their contents are said to have greatly influenced the votes of the Commons.

OBSERVATIONS concerning the Court of CHANCERY, presented to the Parliament.

“1. IF we look back into antient Times; we shall find the Business of the Chancery to be but little, and the Officers and Clerks but few; namely, a Chief Clerk, who was

* “How did good people rejoyce when they heard of that vote, and how sad and sorrowful were the Lawyers and Clarke, for the feare of the losse of their great *Diana* may be remembered; with their great joy and making of bonfires, and drinking sacke when they were delivered from their feares by the dissolution of the late Parliament.” *Exact Relation*, &c. p. 13.

“ Master of the Rolls; three Attornies or writing Clerks,
 “ who dispatched the Business now done in the Six-Clerks
 “ Office; one Register, and one Examiner; all which, except
 “ the Chief Clerk, were writing Clerks, for Dispatch of the
 “ Business of the Court, and taking Care of Clients Causes;
 “ and for such their Care and Pains they received all the
 “ Fees which the Clients paid, except only what was due to
 “ the Master of the Rolls; which fees then paid, although
 “ the Certainty of them is not known, yet it is more than pro-
 “ bable the same were not so great as now are taken; but
 “ then, the Labourer receiving his full Wages, the Business
 “ was well and soon dispatched, and the Records well kept.

“ 2. It is observed that as the Business of the Court
 “ increased, the Attornies increased to the Number of six,
 “ and the Examiners to the number of two, and so kept
 “ themselves at that Number; and as the Business farther
 “ increased, the Attornies, Examiners, and Register, by the
 “ Consent of the several Masters of the Rolls, from Time
 “ to Time increased their Clerks, and cast all the Care,
 “ Pains, and Burden of Causes, and all Disbursements for
 “ Clients, upon their Clerks; and they wholly withdrew
 “ themselves from the Duty of their Places, and became
 “ overseeing Officers, and not writing Clerks, according to
 “ their primitive Constitution; and then their only Care was
 “ to contrive Rules and Methods of Practice, with many
 “ tedious and unnecessary formalities, in such Manner as
 “ that no Business might pass by them undiscovered, nor any
 “ Fees unpaid; and this occasioned great expence to the
 “ Clients, and much more Pains to the Under-Clerks than
 “ was necessary.

“ 3. It may be observed, that, notwithstanding such
 “ Rules of Practice prescribed by the Six Clerks, yet the
 “ labouring Clerks of that Office (to whose Care only the
 “ Clients commit their Causes, and depend upon them for the
 “ Management thereof) do often conceal the Business, and
 “ the Fees due for the same from the Six Clerks, and satisfy

“ themselves touching the Lawfulness thereof, as well in
 “ regard they often disburse money for their Clients to the Six
 “ Clerks, which they never receive again; as also for that
 “ the whole Care and Burden lies upon them, and not upon
 “ the Six Clerks (they being indeed the true and lawful
 “ Attornies of the Court to all Intents and Purposes, and in
 “ all Respects, except in Name only): But by reason of
 “ these Concealments of Business and Fees, the Causes are
 “ not proceeded in, and prosecuted in that formal and regular
 “ Way of Practice which is directed by the Six Clerks; and
 “ as often as it is discovered the Clerk suffers disgrace, and
 “ the Clients much Delay and Damage: and this is the
 “ most common and greatest grievance before the hearing of
 “ Causes.

“ 4. Also it is to be observed, that there are the like
 “ Inconveniences in the Registers Office and the Examiners
 “ Office, by reason the Masters of the same several Offices
 “ receive almost all the Fees due from the Clients, and leave
 “ their Clerks to receive Expedition-Money, and other
 “ unjust Rewards, from the Clients, without which they
 “ could not subsist. And as for the Subpoena Office and
 “ Affidavit Office, being monopolized but in King James’s
 “ Time, there is no Use at all of them; nor were they
 “ erected for any other End but to put the Clients to
 “ unnecessary Expences and Delays, and the practising
 “ Clerks to needless Trouble.

“ 5. It is very evident and manifest that all the Mischiefs
 “ and Inconveniences, before-mentioned, came to pass thus:
 “ In respect the several Masters of the Rolls for the time being
 “ (as Chief Clerks of that Court) having the nomination of
 “ the Six Clerks, Examiners, and Register, found it more
 “ profitable to continue them at that small Number, and sell
 “ their Offices for great Sums of Money to Men altogether
 “ ignorant of the Practice of the Court, than to admit
 “ deserving Men *gratis*, as by the Duty of these Places they
 “ ought to have done; and, as the Business increased, to

have increased able and honest working Attorneys, settling Judges of other Courts of Justice &c.

6. That the Inconveniences in the Prosecution of Causes which concern Clerks, as namely when Defendants will willingly stand out al Process of Contempt, which, according to the Rules prescribed in the Six Clerks returns a Four Time to interrogate and then pay all Costs and make a modest Answer and then bring over-ruled, stand out al Process of Contempt as it first, and then make a second modest Answer, and so into and forth, so the said Defendants cannot be compelled to make modest Answers at any of these Times, and sometimes Plaintiffs likewise prefer vexatious Suits against Defendants, and keep them long in suspense without any judicial Prosecution But this, although it is to be wished, is not altogether so mischievous as the former.

7. That other Inconveniences may be observed at and after the hearing of Causes, more prejudicial to Clients than the former; for it may be observed besides the many superfluous and unnecessary Orders made in Causes, pending the Suit, that Causes of late Times are heard not only once or twice, but five or six Times, by reason of which often Attendance, and the Greatness of Counsels Fees (which are fit to be moderated) Clients are put to a very great and vast Expence; and the Orders many Times are so weakly and uncertainly pronounced, that none that hear them know what they are; and thereupon the Registers take the Liberty to draw what they please; and the Weaknesses of the Judges do often occasion needless References to Masters of the Court, where there are many Times very unfair proceedings.

8. For it is most notoriously known that the Masters of the Court, although there be no Fee due to them from the Client, yet they, most of them, are very much guilty of taking unjust Fees and Rewards, tending very much to the

“ Wrong and Prejudice of Clients: And the deputy-Registers are likewise too much guilty of this Crime.

“ 9. And lastly it is observed, that after decrees are past, there is a tedious Prosecution on the Plaintiff's Part before he can have the Benefit thereof; by reason whereof he often loseth all his Labour and Charge, and never reaps the Fruit of the Decree.

“ PROPOSALS tendered to the Parliament, for the Regulation or taking away of the Court of CHANCERY, and settling the Business of Equity according to the original and primitive Constitution of it; and for taking away all unnecessary Fees, Offices, and Officers, and Formalities now used, and for the speedy Dispatch of Business.

“ 1. That the Court as it is now used, or rather abused, be wholly taken away; and that some of the most able and honest Men may be appointed for keeping of the Great Seal, and authorized to examine, hear, and determine all Causes of Equity; and impowered to put in Execution their Judgments and Decrees in the same Manner, and with the same Expedition, as Judgments at Common Law are: For as long as the Bar is more able than the Bench, as of late it hath been, the Business of the Court can never be well dispatched (and former Times have thought the most able Men but fit for this Employment); and that the Judges of the Court may have Power likewise to punish Perjury committed in the same Court.

“ 2. That instead of the Six Clerks, Chief Register, and Two Examiners, so many godly, able, honest, and experienced Clerks may be admitted in their Rooms, as may be able, with their own Hands, to write and do the Business of the Court; and which may be working Attornies and Clerks, and not overseeing Officers; that is to say, Six Clerks in the Registers Office, Eight Clerks in the Exa-

“ miners Office, and Sixty Attornies or Clerks for doing the
 “ Business now done in the Six-Clerks Office ; and that all
 “ these Clerks may receive a Moiety of the Fees now taken,
 “ and no more, save only the 3s. 4d. for the Attornies termly
 “ Fee, which may continue as formerly.

“ 3. That the Sixty Attornies do elect two of the most
 “ able and experienced Men in the Business of the Court,
 “ and to be approved of by the Commissioners for the Great
 “ Seal, to be chief Clerks, to attend daily in Court, to satisfy
 “ the Court in any Thing touching the Practice of the Court,
 “ and to do such other Services as the Court shall direct ;
 “ as also to look to the due Ordering and Filing of the
 “ Records, and to receive for their Pains a termly allowance
 “ from the Practising Clerks, not exceeding 200*l. per Annum*
 “ a piece ; and not to receive any Fees from Clients, for, if
 “ so, then the same Mischief will follow as formerly hath
 “ done.

“ 4. That a certain Number of Godly and able Men be
 “ appointed, instead of Masters of the Court, to take Oaths,
 “ and to hear and determine Matters of Account, and such
 “ other Things as the Court shall refer unto them ; who shall
 “ sit, examine, and certify the same in Order as they are
 “ brought before them, and shall have a constant Register to
 “ attend them ; and no Report to be made, but by two of
 “ them at least.

“ 5. That the Attornies of the Court be not only permit-
 “ ted, but enjoined to make Motions for their Clients for any
 “ Thing concerning the Practice and Course of the Court, as
 “ is now used in other Courts of Justice, (as hath been
 “ formerly used in the Chancery) for which they are to
 “ receive no Fee, but content themselves with their termly
 “ Fee at 3s. 4d. and the Court to appoint convenient Times
 “ for hearing such Motions.

“ 6. That a certain Number of able and godly Men be
 “ appointed to peruse and allow of all Bills before they be
 “ filed ; for which they shall receive for every Bill ————,

“ for preventing of many vexatious Suits, and Suits altogether
 “ improper for the Jurisdiction of the Court; and that no
 “ Attorney make out any Summons untill the Bill be so
 “ perused, allowed of, and filed.

“ 7. That upon every Hearing of a Cause, or other Order
 “ touching the Merits of a Cause, after the Court hath pro-
 “ nounced their Order, the Register to read the same with
 “ an audible Voice, not only the Substance but the very
 “ Words of the Order, for avoiding all Mistakes in
 “ drawing of Orders.

“ These are humbly conceived to be fit Proposals in relation
 “ to the Constitution of a Court of Equity, whereby to bring
 “ it to its original Purity.

“ As to the Practical Part of the Court: It is conceived
 “ requisite that Rules of fit Practice should be framed by the
 “ Attornies of the Court, so to be allowed of as aforesaid,
 “ and the same presented to the chief Clerk; and they to
 “ peruse and amend the same, and then present them to the
 “ Keepers of the Great Seal for their Approbation thereof;
 “ whereby all vexatious Plaintiffs and wilful Contemnors
 “ may receive condign Punishment by Payment of Costs, as
 “ also by Fines, Sequestrations, and otherwise, according
 “ to their Demerits; and whereby all needless Formali-
 “ ties and Delays in the proceeding of Causes may be taken
 “ away, and all expeditious Ways and Means used for the
 “ expediting of Causes, and the Ease of Clients: And it is
 “ not to be doubted but such Rules of Practice may be framed
 “ as that no Cause shall depend above a Year (but generally
 “ not so long) before it be ready for hearing; and the whole
 “ charge of the Proceedings not to exceed ordinarily above
 “ 40 or 50s.

“ But the particular Rules of Practice are not herein
 “ expressed, for that it is conceived impossible to prescribe
 “ and limit all Rules of Practice by Act of Parliament,
 “ but the same will be very prejudicial to the People: For
 “ if the Rules of Practice should be enacted, then cannot

“ the Judges of the Court dispense with the Letter of the
 “ same Rule, though it be in a case of Sickness, Death,
 “ or other like cases of the greatest Extremity.

“ Yet as to the Judicial Part of the Court, it were to be
 “ wished that a certain Time was limited for Mortgagers to
 “ redeem their Lands; and if likewise some Limitation of
 “ Time was put to other Suits, whereby Things might be
 “ brought to as great a certainty as could be possible.

“ It is conceived very fit likewise that a Table of Fees
 “ should be allowed of by the Commissioners or Keepers of
 “ the Great Seal, and afterwards confirmed by Act of Parlia-
 “ ment, and a Penalty imposed upon every Man that shall
 “ exceed them.”

On the 19th of October, 1653, a Bill was reported from the Committee of the Law and read a second time, for the abolition of the Court and the appointment of Commissioners for hearing the existing and future causes.* On the 22nd, it underwent some amendments in committee,† and again on the 3rd of November.‡ The suicidal dissolution of the Parliament on the 12th of December following, blighted the hopes of the country which had anxiously viewed with high expectation these sound and well directed plans of legal reform. One member, before the removal of the mace, in a bitter invective against that audacious dissolution, deplored the approaching destruction of a parliament, when “ the committee for regulating the Law had ready to be offered to the house, several bills of very great concernment to the good and ease of the people.” Such was the premature end of a Parliament which of course Clarendon belies, and Carte echoes Clarendon, and Rapin terms it “ a ridiculous assembly that did nothing worth remem-

* Comm Journ. vol. vii. p 336. † 338. ‡ 346.

bering in a session of more than five months!" The unconstitutional and unjustifiable convention of it by Cromwell's warrant of nomination, was a damning sin which the servile historians thought could never be atoned for: prejudice prevented their inquiring into, or induced them to conceal its important labours; they thought that no good could come out of Galilee, but subsequent Parliaments in the adoption of many of the legislative principles and intended reform of these republicans have more wisely acted on the motto—*Fas est et ab Hoste Doceri*.

What were the precise intentions of this Parliament with respect to the Court of Chancery, cannot be ascertained from the Journals. The author of the "Exact Relation" before cited and referred to, states that the first bill introduced for removing the court "was opposed by those gentlemen that had no mind it should be taken away," and ultimately withdrawn, because it did not sufficiently provide for the due disposition of the business then pending. He says that a second bill was then brought in and read "that was looked upon by many as the washing of the Blackamore, or pruning or lopping evil branches, where three or four in a little time will come instead of one cut off," and was therefore speedily cast out. A third bill was then prepared, which shared the same fate, and which the same author says "to very many seemed to be a setting up of two courts rather than a casting downe one, and an establishing of the Chancery, rather than a taking of it away: Some gentlemen of great note of the long robe had a hand in it, that it is likely will never spoyle their owne trade. The bill by very many after a long and sharpe debate, was judged short of the end aimed at, and being put to the question, it passed in the nega-

pleaseth : how arbitrary is the Law in this case ? and at what uncertainty are the great interests and proprieties of men ?

Beside, how various are the customs, which notwithstanding passeth for law ? Usually unknown, but to some old men of the place, which though it be never so unrighteous and unreasonable, *Time out of minde*, carries it. How bulky and voluminous are the Statute Books ? and of so great a price as few are able to buy them, and so large that few can spare time to read them, to know their right, and how they are concerned in them ; and yet they must be judged, and stand or fall by them. And many times some old musty Statute of a hundred years old, and more imprinted, is found and made use of by some crafty Lawyer, to the undoing of an honest man that meant no hurt, nor knew any thing at all of the danger. Upon something held forth to this effect, the Vote was carried for a new body or model of the law, and a Committee chosen to that end, who met often, and had the helpe of some gentlemen of worth, that have deserved well of their countrey, being true patriots : who liked well the thing, as very usefull and desireable : It being not a destroying of the LAW, or putting it downe, as some scandalously reported : But a reducing the wholesome, just and good laws, into a Body, from them that are useless, and out of date ; such as concerned the Bishops, and holy Church (so called) and were made in favour of Kings, and the lusts of great men, of which there are very many : and law of God being eyed, and right reason looked unto in all : there being some of the laws that are contrary to both : as the putting men to death for Theft, the sparing the lives of men for Murther, under the notion and name of Manslaughter, a term and distinction not found in the righteous law of God : And that unreasonable law, that if a Waggon or Cart, &c. driven by the owner, or some other, with never so great care and endeavour, fall and kill any person, the owner, though it were his own son or servant could no way help it, shall loose his horse and

waggon by the prophane and superstitious name of Deodand; and the owners of the goods shall lose them also upon the same account, though they were as innocent as *Abel*: other instances might also be given.

The way the Committee took in order to their work, which must needs be elaborate; was by reducing the severall laws to their proper heads, to which they did belong: and so modelizing or imbodying of them, taking knowledge of the nature of them, and what the law of God said in the case, and how agreeable to right reason they were; likewise how proportionable the punishment was to the offence or crime; and wherein there seemed any thing either deficient, or excessive, to offer a supply and remedie, in order to rectifying the whole: The committee began with criminals; Treason being the highest, they considered the kinds; what was meet to be adjudged Treason, in a free commonwealth; and what was meet to be the punishment of grand and petty Treason: then they proceeded to Murther, the kinds of it, and what was to be so adjudged, and the punishment thereof. The like they intended concerning Theft, and after to have ascertained and secured propertie; as also the executive part of the law: so as a person should not need to loose, or part with one propertie, to secure and keep another, as now it is: Persons being forced to lose or part with the propertie of their cow, to keep the propertie of their horse; and one piece or parcel of land to preserve and keep another. Which Body of Law when modelized, was to be reported to the House, to be considered of, and passed by them as they should see cause; A work great, and of high and great esteem with many, for the great fruit and benefit that would come by it: By which means the great volumes of Law would come to be reduced into the bigness of a pocket book, as it is proportionable in *New England* and elsewhere: A thing of so great worth and benefit as *England* is not yet worthy of, nor likely in a short time to be so blessed as to

injoy. And this being the true end and endeavour of those Members that laboured in that committee, it is submitted to every godly (and rationall) man in the Nation, whether (as is most falsly and wickedly reported, and charged upon persons acting in so much love to their countrey) their endeavours tended to destroying the whole laws, and pulling them up by the roots."

When the "Protector and his Council" assumed the government, *Ordinances*, or in other words their arbitrary mandates, became the laws of the land. And no time was lost in framing one for the temporary regulation and reform of the Chancery: it was intitled—"An Ordinance for the better regulating and limiting the Jurisdiction of the High Court of Chancery." By the imprimatur to the original publication, under the signature of Scobell, as clerk of the Council, it appears to have been issued on the 22nd of August, 1654. The preamble states that its object was "to the end that all proceedings touching relief in equity, to be given in that court, may be with less trouble, expense, and delay than heretofore." The ordinance provides for the reduction of the number of officers and their fees, the simplification of the process of Chancery, and the prevention of delay.* It is not known by whom this ordinance was drawn up, or what was the ultimate plan for the future and more complete regulation and reform of the court. In Cromwell's speech, on opening the ensuing parliament, (Whitelocke attending in his train) the Protector appeals to the Chancery and other Ordinances as evidence of the great care of the public weal by himself and his Council, in the interim between the former and the new Parliaments. He says his government "had some things in

* See also Scobell's Acta. p. 324.

“ desire, and it hath done some things actually : it hath
 “ desired to reform the Laws : I say to reform them ;
 “ and for that end it hath called together persons
 “ (without reflection) of as great ability, and as great
 “ integrity, as are in these nations, to consider how the
 “ Laws might be made plain and short, and less charge-
 “ able to the People ; how to lessen expence for the
 “ good of the nation ; and those things are in prepara-
 “ tion, and the bills prepared, which in due time I make
 “ no question will be tendered to you. There hath been
 “ care taken to put the administration of the Laws into
 “ the hands of just men ; men of the most known in-
 “ tegrity and ability.*—The CHANCERY hath been
 “ reformed, and I hope to the just satisfaction of all
 “ good men ; and for the things depending there, which
 “ made the burden and work of the honourable persons
 “ intrusted in those services beyond their ability, it hath
 “ referred many of them to those where Englishmen
 “ love to have their rights tried, the Courts of Law at
 “ Westminster.”†

Cromwell, subsequently forgetting that he had been himself a member of the law-committees,‡ and that he

* In justice to Cromwell it must be acknowledged that he appointed the most eminent men at the bar to the highest judicial stations. In the preceding year he renewed the patents of the Commissioners of the Great Seal, and of seven of the Judges, viz. Rolle and Aske, of the King's Bench ; St. John, Atkins, and Hale, of the Common Pleas ; Thorpe and Nicholas, of the Exchequer. Maynard, Pepys, Wyndham, Newdigate, and Twisden, were made Serjeants. And it is worthy of mention that many of these distinguished characters were appointed Judges after the Restoration.

† Whitlocke. p. 582.—Old Parl. Hist. vol. xx. p. 328.—His Highness the Lord Protector's Speeches to the Parliament. 4th and 12th of Sept. 1654. London, 4to. 1654.

‡ Harris, in his *Life of Oliver Cromwell*, has some excellent remarks on this project. He says “ the tediousness and expensiveness of law proceed-

had assumed credit for the projected reformation, had the effrontery to charge the former Parliament with the design of "upsetting law and justice." Mr. Brodie, in treating of this period, and the respective positions of the different parties, very sensibly remarks, "in the " Lawyers Cromwell was disappointed; the reformation " of the legal proceedings which was contemplated, as " it threatened to lower the importance of the pro- " fession, by rendering the law accessible to every one, " and simplifying the forms, is alledged not to have been " acceptable even to these eminent individuals, (St. " John, Whitelocke, and the lawyers) while it was " greatly disliked by the more vulgar practitioners, who " had no ideas beyond the dull routine of their little " practice; and Cromwell had flattered himself that, " in their anxiety to preserve the monarchical form of " government, and, along with it, the old state of the " common law, they would willingly assist him to the " throne."* That this imputation of the Scottish

" ings have long been the subject of complaint, as well as that glorious " uncertainty of the law, which has been often boasted of with high glee " by some of its professors. It is not to be doubted but the slow and pro- " lix process of the law, sometimes preserves the unwary or unskilful " from being surprised, and affords the fairer opportunity to bring truth to " light, or give relief to the oppressed: but whether these advantages are " not outweighed by the vexation, trouble, and expence necessarily in- " curred thereby, those who have been so unhappy as to be engaged in it, " can best determine.—No great matters, however, followed from this " committee, by reason of the hurry of the times, and the opposition of " the Lawyers, who were full of Lord Coke's opinion concerning the " perfection of the Laws of England, as gentlemen of that profession for " the most part will always be; for as they then and now stand, they are " the means of procuring preferments, titles, and ministerial estates. Can " we wonder then that they have viadicators, admirers, and applauders?" —Vol. iii. p. 289. ed 1814.

* Brodie's History, vol. iv. p. 339.

annotator is well founded, we have Cromwell's own authority, and that the Protector himself adopted the old hue and cry of "revolutionary destruction," for his own temporary and sinister purposes. In a conversation with Ludlow, recorded by that historian, Ludlow says that Cromwell stated to him "that it was his intention "to contribute the utmost of his endeavours to make "a thorough reformation of the Clergy and the Law: "but said he, the sons of Zerviah are yet too strong "for us; and we cannot mention the reformation of the "law, but they presently cry out, '*We design to destroy propriety*.' whereas the law, as it is now constituted, "serves only to maintain the Lawyers, and to encourage the rich to oppress the poor; affirming that "Mr. Coke, then Justice of Ireland, by proceeding in "a summary and expeditious way, determined more "causes in a week, than Westminster Hall in a year; "saying farther, that Ireland was as a clean paper "in that particular, and capable of being governed by "such laws as should be found most agreeable to "justice; which may be so impartially administered, "as to be a good precedent even to England itself; "where when they once perceive propriety preserved "at any easy and cheap rate in Ireland, they will never "permit themselves to be so cheated and abused as now "they are."*

It has conveniently formed part of the abuse heaped upon the Long Parliament, that Mr. Hugh Peters, (whose very name appears to be the target for the poisoned arrows of party virulence,) was a member of the Law-committees. It is almost a matter of just suspicion that this singular man possessed some charac-

* Ludlow's Memoirs. p. 123.

teristics peculiarly inimical to law-craft, as his name is so industriously and viciously belied. Be this, however, as it may, if the union of bad men with useful undertakings is decisive against reformatations, no worldly improvement could be vindicated or would succeed. But it is not certain that Hugh Peters was altogether unfitted for the important avocations of the law committee, as appears by many sensible suggestions for legal reform, in a little tract published by him in 1651,* chapter iii., article *Justice*. Peters observes that the Lawyers would find more real law and justice in the ten commandments than in their "obsolete precedents:" he is the advocate of local courts and registers; but unfortunately excited the angry indignation of Prynne, by the following sentence—"this beeing done, it is verie advisable to burn all the old Records; yea, even those in the Tower, the Monuments of tyrannie."† Against this proposition Prynne fulminates: "It was the pernicious design of that execrable, pragmatistical traytor, Hugh Peters, and some of his late levelling disciples, to burn all the old records in the Tower, or elsewhere, which he excited the late Anti-monarchical Republicans to execute as good work for a good magistrate."‡ Hence originated a true specimen of the historical syllogism: Hugh Peters was a member of the law-committee in 1651, Hugh Peters plotted the destruction by fire of the Tower of London, therefore the law-committee

* Good Work for a good Magistrate, or a short Cut to great quiet by honest, homely, plain English Hints, given from Scripture, Reason, and Experience, for the regulating of most cases in the Commonwealth. London. 1651. 12mo.

† Good work for a good Magistrate. p. 33.

‡ Prynne's Writs. part iii.—*Bevia Parliamentaria Rediviva*. Epistle Dedicatory. 1659.

was composed of thieves and fools—*quod erat demonstrandum*.*

But to return to the Protector's Ordinance, issued in August, 1654,† the first reference we find to that document in the Journals is under the date of the 5th of October following, "ordered, that the Ordinance for regulating and limiting the jurisdiction of the Court of Chancery, and the matters therein, be referred to a Committee, with power to consider of, and report to the House if it be fit, in part or in whole, to suspend the same."‡ The Lords Commissioners, and several of the Judges were nominated committee men; but whether they acted does not appear. On the 13th, the Committee reported that they had met several days, and were of opinion that the execution of the Ordinance should be suspended till the 28th of November following: a resolution to which effect was entered on the Journals, and the Committee were ordered to revise the whole ordinance and report progress to Parliament, before the said 28th of November.§ On the 10th of

* "How much were it to be wished, that a Committee of wise and prudent persons were once more employed to revise, amend and abridge our Laws! That we might know ourselves how to act, and not be necessitated to make use of those, who (we are sensible) live on our spoils. But much is it to be feared, that our adversaries will be too hard for us, and that we shall be obliged, for a time at least, to submit to their yoke."—*Historical and Critical Account of Hugh Peters*, note m. 8vo. London, 1751.

† The original folio black letter publication of this Ordinance was entitled as follows—"An Ordinance for the better regulating and limiting the jurisdiction of the High Court of Chancery. (Tuesday, August 22, 1654. Ordered by his Highness the Lord Protector, and his Council, That this Ordinance be forthwith Printed and Published, Henry Scobell, Clerk of the Council) London, Printed by William Du Gard and Henry Hills, Printers to His Highness the Lord Protector, 1654.

‡ Comm. Journ. vol. vii. p. 373.

§ Ibid p. 377.

that month we find an order on the Journals, "that the report of the act for regulating the Chancery, be made on that day sennight." On the 25th, it was again ordered that the ordinance and the report be further suspended to the 25th of December. On the 4th of December, the Chairman, Mr. Foxwist, reported "an act for the better regulating and limiting the jurisdiction of the Chancery," which was read a first time, after which we lose sight of the project; and on the 10th of January, find entered on the Journals, another suspension of the ordinance till the ensuing 1st of March.*

The semblances of freedom were still maintained: on the 6th of December, 1654, it was resolved that, among other officers, the Lords Commissioners of the Great Seal, and certain of the Judges should "be chosen by the approbation of Parliament; and in the intervals of Parliament, by the approbation of the major part of the Council, to be afterwards approved by the Parliament."† Cromwell, however, according to Ludlow, discovering that this Parliament, though of his own gathering, was "not sufficiently inclined to serve his designs," soon dissolved it.

We lose all trace of the ordinance, the Chancery, and the intended reform, till the 23rd of April, 1655, when an order in Council was made, signed by Scobell, "that the Lords Commissioners of the Great Seal, do proceed according to the ordinance of his Highness and the Council, intituled *An Ordinance for the better regulating, &c. the Chancery.*" The Lords Commissioners were summoned before the council, and informed of this order. The Chairman told them, "That this ordinance

* Comm. Journ. vol. vii. p. 385—390, 392, 394, 407, 414.

† Ibid. p. 397.

was made upon good deliberation and advice, and his Highness was persuaded that it would much conduce to public good to have it duely executed, which this order did require." He then delivered the council order to Whitelocke, saying "his Highness did not doubt of their ready compliance therein." Whitelocke in reply told the Council, "That they had *not* the honour to be "advised with upon the making of the ordinance, and "that they were under an oath, and as far as they could, "they should readily comply with the pleasure of his "Highness and the Council, and desired some time to "peruse it."* On this answer a debate occurred between the Council and the Commissioners, and Lenthall, the Master of the Rolls, expressed himself strongly against the ordinance. The Council however cut the discourse short, and dismissed the contumacious Lawyers, gravely admonishing them "to be careful not to oppose his Highness's intentions for the common good."†

After this interview the Commissioners and Master of the Rolls held several meetings and consultations relative to the execution of the Ordinance. Lisle declared himself unreservedly favourable to the adoption and execution of it: Widdrington, Whitelocke, and Lenthall were opposed to it, and drew up a long schedule of reasons against it and objections to the different clauses. These they digested, and wrote a letter,‡

* Whitelocke's Memorials. p. 802.

† Ibid. p. 636.—Lives of the Chancellors. vol. ii. p. 210.

‡ The following is a copy of the letter addressed to the President of the Council. "My Lord, We have seriously and duly considered what we "received from his Highness concerning the execution of the Ordinance "touching the *Chancery*, and have strictly examined our own judgments

which they severally subscribed, and forwarded to the President of the Council, acquainting him with their disaffection. The Ordinance itself is so little known, and contains so many excellent amendments of the practice, and at the same time the objections of the Commissioners are often so judicious, that the two documents will be given at length in the Appendix.* The Commissioners, it appears, did not observe the Ordinance during the whole of the first term; and notwithstanding the earnest entreaties and warnings of their friends to retire their scruples, they utterly refused to acknowledge the legality of the Protector's ordaining labours. On the 6th of June the Clerk of the Council sent for them to attend Cromwell with the seal on that evening. Whitelocke says "they knew the meaning well enough:" the result was that Cromwell required them to resign and deliver up the seal, which ordinance they immediately obeyed.† On the 15th he delivered the seal to Colonel Fiennes and Lisle, more complaisant commissioners, but both equally inefficient persons for such an important office: Whitelocke says that Lisle "carried the business of the Court very high and superciliously." It is but justice to Whitelocke to state that in this opposition he appears to have been entirely influenced by honest motives. He says that "some com-

"and consciences, having with all submission sought to God therein, yet
 "cannot give ourselves satisfaction, so as be free to proceed upon that
 "Ordinance, wherefore and in regard of the near approach of the Term,
 "We hold it our duty to represent the same unto his Highness, together
 "with the great trouble of our own thoughts, in our unhappiness in this
 "dissatisfaction; and desire the favour from your Lordship to acquaint
 "his Highness herewith, we remain, My Lord, your Lordship's very
 "humble Servants, B. WHITELOCKE, T. WIDDRINGTON, W. LENTHALL."
 —*Whitelocke's Memorials*, p. 606.

* Appendix, No. 2.

† Whitelocke. p. 606.

mended what he had done as a conscientious act, some of larger principles blamed him for parting with so great and profitable employment, upon a nice scruple, which probably themselves would have swallowed although it had been never so great." Lenthall, who had been the most strenuous opponent of the Ordinance, and who had declared that he would be hanged over the Rolls gate rather than execute it, when he saw the Lords Commissioners dismissed from their places, thought better of and surrendered his opposition, not choosing to be hanged for such a trifle, but rather to die a natural death in the office of the Rolls. Whitelocke, who was himself no indifferent judge of the influence of terror and self-interest, briefly remarks on the motives of his brother Lenthall, that "his profits and fear to offend overruled all other considerations."—It has been said in modern times—

As bees on flowers alighting cease their hum,
So settling upon places *wigs* grow dumb.

This celebrated ordinance was further extended till 1656, by another ordinance or act in that year, which enacts, that it "shall be and is hereby confirmed and continued, and shall stand and be in full force and strength untill the end of this present parliament and no longer."* In most of the law books it is said to have ceased in 1656, on the authority of the above entry in Scobell's acts: but in the Commons' Journals, under the date of the 29th of April, 1657, a resolution appears prolonging its authority to the end of the Parliament as aforesaid, which was not dissolved till the 4th of February, 1657, on which day therefore the or-

* Scobell. p. 394.

dinance was probably determined. By a provisional order of the Lords Commissioners, dated the 4th of March, 1657,* certain clauses of Cromwell's ordinance relating to fees, and to the Six Clerks and Sixty Attornies, were confirmed. A great confusion now occurred by many of the old officers, on the expiration of the ordinance, considering themselves reinstated in their former offices, and entitled to their ancient fees. Several orders were made in consequence, in which will be found the particulars of these clashing interests, and the various provisions regulating and controuling them. As far as the Six Clerks were concerned, under these and the subsequent orders, the reader will see much valuable and digested information in the Chancery Case, in 1798, *Exparte* the Six Clerks.†

From this period few digested or zealous plans of legal reform appear to have been agitated in Parliament. Either Cromwell was kept in awe by the Lawyers, or promoted his own profit and influence by not suppressing the judicial abuses. In the Journals, 19th of November, 1656, a bill was introduced for erecting Courts of Law and *Equity* in Yorkshire and several

* Beames. p. 129.

† Vesey's Reports, vol. iii. p. 589. In the judgment on that question, Lord Chancellor Loughborough spoke with great contempt (and corresponding ignorance) of the labours of the Commonwealth Parliament, and of Cromwell's Ordinance. He says—"In 1653, a proposition was made by what was called the Parliament, which would have been the complete destruction of the Courts both of Law and Equity of this Country. It was a vague, wild and absurd proposition of reform. Some of the great men" (Whitelocke, Widdrington, &c. to wit.) "tried to stem the torrent, not with much effect at that time: but luckily that Parliament dissolved itself. Some of these ideas of reform had taken strong hold of the minds of some persons, and produced the ordinance by Cromwell to regulate the Court of Chancery."—p. 599.

of the northern counties ; * but whether the word Equity imports that any district chancery courts were in contemplation does not appear. It is not generally known that country commissions were certainly at one period, in use, not only for the purpose of conducting the interlocutory proceedings of suits but also for decree and final determination. In West's Chancery precedents, an old latin form is given under the following title, " Commissio ad recipiendum responsum, ad examinandum testes quoscunque *et ad audiendum et terminandum.*"† The Counties Palatine have also claimed an equity jurisdiction within their respective territories. ‡

The next project we find in Cromwell's reign for reforming the Court of Equity, is the appointment of a Committee, on the 30th of April, 1657, "to take into consideration the regulation of the Court of Chancery ; and to bring in a bill in that behalf, if they see cause." The Committee was composed of some of the first political and legal characters of the times ; and they were to meet every Monday afternoon, at two o'clock, with the usual power to send for persons, papers, witnesses, and records. || The result of this Committee, if any, has not been recorded ; but perhaps some light may be thrown on the subject by the following queries extracted from a contemporary tract.

" 5ly. Whether the Judges and Commissioners of the Chancery, together with such who have great places in administering of Law to the people, and very great advan-

* Comm. Journ. vol. vii. p. 556.

† West's Symboleography. 4to. 1627. part 2. p. 19.

‡ See Coke, Inst. iv. p. 87, 97, 213. and Perrot's case.

|| Comm. Journ. vol. vii. p. 533.

tages, and profits thereby, be not likewise to be excepted against as to Parliamentary Trust. It being most sure that they will hardly be disposed to make such laws and governments as may diminish the splendor, or mercenariness of their profession, seeing they are known to be men, who from time to time, have alwayes advanced their own trade, as their present height doth witness, who to the great dishonor of the Nation, while they profess themselves the ministers of Justice, and Righteousnesse to the people, doe under that pretence, greaten, and inrich themselves, in the oppressions and miseries of the people.”—p. 21.

“ 6. Whether the Lawyers, or Gentlemen of the long Robe, having gained their Protector, over to their interest and party (as was learnedly and wittingly intimated, by the Speaker, at the late Inauguration, when he had divested him of his sword, and put on the Kings Robe, (*That now he might speak without offence, That his Highness was become a Gown-man*) are not in a fairer or more likely way, and capacity, to hang up the Souldiers Belts and Swords in *Westminster* Hall by the Scottish colours, than the Souldiers are, to hang up the Lawyers gowns there? As they have oftentimes threatened they would: Alas poor *England*, is not the Law, and the administering of it, as corrupt, dilatory, burthensome, and vexatious as ever? doth the striving of these two great Interests produce any good to thee? (which the Souldiers once so highly pretended too) or rather is there not hereby an increase of thy pressures and burthens.”—p. 28.*

* A Narrative of the late Parliament (so called), their Election and Appearing, the Seclusion of a great part of them, the Sitting of the rest. With an Account of the Places of Profit, Sallaries, and Advantages, which they hold and receive, under the present power. With some *Queries* thereupon: And upon the most material Acts and Proceedings passed by them. All humbly proposed to consideration; and published for information of the People. By a friend to the Commonwealth, and to its dear-bought Rights and Freedome. 4to. anno 1657.

Whatever objections the Ex-Commissioners entertained against innovations in the old modes of jurisprudence, they did not extend their prejudices against the usurpation of Cromwell; for although Whitelocke and Lisle objected to his assuming the title of *Protector*, it was on the score of the *unknownesse* of that designation, which they urged him to exchange for the more ancient and imposing appellation of *King*.*

The Parliaments of Cromwell were but the creatures of his appointment and will. They not only confirmed his title of Lord-Protector, but made him a "legal tender" of the crown itself; and the Lawyers were especially bound to him, by a mutual compact, to sanction his usurpation of the government, provided he would protect them in the full enjoyment of the corrupt state of the law.

On the death of Cromwell, his son Richard assumed the hereditary dictatorship, and the vessel of the state was tossed on the billows of military anarchy and civil contention.

The *Rump* Parliament now took the helm of government, the remnant of that famous parliament which had deposed and beheaded Charles I., and which Cromwell had so summarily dissolved. Prynne, in one of his innumerable pamphlets,† opposing this noted convention, says, "that of these members, there entered only "forty-two into the house at first; that the rest came "in to them by degrees, either to keep their old preferment, gain new, or regain the places they had formerly

* See Whitelocke, and Comm. Journ.

† Conscientious, Serious, Theological, and Legal Queries, propounded to the twice-dissipated, self-created, Anti-Parliamentary Westminster Junto, &c. 4to. 1659.

"lost, especially the *Lawyers*; who, notwithstanding "their former compliances, were turned quite out of "office, and dis-judged." Perhaps these gentlemen would have more quickly hastened to the assembly had they anticipated the proceedings and prejudice against themselves. All writs and legal process were directed to run as formerly, in the name of the "keepers of the liberties of England;" and Ludlow writes, that "lest the judges who were members of the house might, by their influence there, prevent the intended reformation of the Law, it was resolved that no member of Parliament should be a judge in any court."* On the third day of their meeting a bill was introduced and read a first time, "concerning proceedings in courts of Law and Equity." On the following day, 10th of May, 1659, it was debated and thrown out.† On the 14th, the destruction of Cromwell's Seal was ordered, and a bill was introduced and passed for the manufacture of a new one.‡ Lenthall was nominated Keeper, *pro tempore*. On the 31st an order was made to sequester the fees and perquisites of the office for the use of the Commonwealth; and a resolution appears on the Journals of the same day—"That the Court of Chancery be

* Ludlow's Memoirs. p. 248.

† Comm. Journ. vol. vii. p. 647.

‡ The act is entered in the Journals as follows—"Be it enacted by this "present Parliament, and the authority of the same, That the Seal on the "one side whereof is engraven the maps of England, Ireland, and the "isles of Jersey, Guernsey, and Man, with the arms of England and Ireland; and this inscription; viz. 'The Great Seal of England, 1651,' and "on the other side, the sculpture of the Parliament sitting, with this "inscription, viz. 'In the third year of Freedom, by God's blessing "restored, 1651,' shall from henceforth be the Great Seale of England, "and none other; and shall be, and is hereby authorised and established "to be, of the like force, power, and validity, to all intents and purposes, "as any great seal of England hath heretofore been, or ought to be."

*throughout reformed and regulated.”** On the 4th of June, Bradshaw, Terryl, and Fountaine were appointed Commissioners of the great seal: a new form of Oath was drawn up and administered to them, and by a vote of the same day they were authorised to issue a commission to the Masters in Chancery, to assist them in hearing causes, first administering to the Masters the parliamentary oath taken by themselves.† On the 27th of July it was resolved, that on the Monday following, the house should “take into consideration the regulation of the law and the courts of justice;” which on that day was further delayed to the following Monday. The Parliament at the same time debated some alteration in the law of Tithes, to the great terror of the Clergy. These proceedings, however laudable, were by no means politic, and as might naturally be supposed, arrayed the Lawyers and the Divines in strict alliance. Oldmixon says, the two professions made common cause in defence of their temporalities: “The Lawyers were alarmed at the Bill for Regulating their practice, which, as it is now, is still more a grievance than it then was.”‡ Ludlow details the art of self defence, and being himself one of the *dramatis personæ* in these remarkable scenes, his account is worthy of quotation, and his general historical fidelity is the guarantee of its correctness. “The Parliament had manifested before the last “interruption, an inclination to ease the people of the “payment of Tithes, and in lieu of them, to appropriate a certain sum of money for the maintenance and “encouragement of the ministry, to be distributed in “a more equal manner than had been formerly prac-

* Ibid. p. 671.

† Ibid 672.

‡ Oldmixon. vol. ii. p. 447.

"tised; hoping if this could be effected, that the Clergy
 "would no longer have any other interest to promote
 "than that of the whole commonwealth, nor be a distinct
 "party from the people. It was well known also to the
 "Lawyers, that they still retained the design of regu-
 "lating the practice of the Law, and relieving the
 "people in that particular. These two Parties there-
 "fore being equally concerned to perpetuate the Abuses
 "practised amongst them, became equally sensible of
 "their common danger; and in order to prevent it,
 "Whitlock and St. John for the Lawyers, Dr. Owen
 "and Dr. Nye for the Clergy, had at this time fre-
 "quent meetings at the Savoy, and entered into a
 "private treaty with the Wallingford House Party,
 "to raise £100,000. for the use of the army upon assu-
 "rance of being protected by them in the full enjoyment
 "of their respective advantages and profits; with this
 "farther condition, that they should oblige themselves
 "not to hearken any longer to the advice of Sir Henry
 "Vane. Whereby we were left destitute of hope to
 "see any other reformation of the clergy than what they
 "themselves would consent to, any other regulation of
 "the Law than the chief Justice and the commissioner
 "of the seal would permit, or any more liberty for
 "tender consciences than the Lord Warrister would be
 "pleased to grant, who representing the Scottish inte-
 "rest, made up the third estate of one reformation."*

The history of "this piece or fag-end of a Parlia-
 ment," reveals no further information on the subject of
 the reform of the law. The Rump Parliament had to
 contend with civil dissensions, with the military locusts,
 and with the intrigues of the Exiled King—a combina-

* Ludlow's Memoirs. p. 286.

nation of difficulties against which no new or disjointed government could hold together. Having cashiered Richard Cromwell, their own power was as summarily dissolved, and the *Restoration* succeeded the *Interregnum*. On this uncommon occasion the golden opportunity was lost (it is hoped not for ever) of rearing a barrier against future misgovernment, and securing the rights of the People. The disunion and want of political courage in the popular party, joined to the deep dissimulation and incomparable cunning of Monk, permitted the return of Charles II. to the throne of his ancestors without that recognition of certain great principles of government, which though not always observed by monarchs, are nevertheless considerable restraints, and useful land marks of civil freedom to future generations. How important his Majesty considered this agreeable independance of all chartered restrictions is recorded in the memorials preserved of his treaty with the loyalists, when he is reported to have "merrily said" to Sir John Greenville,* "Little do they in England think that General Monk and I are upon so good terms: for I myself could hardly have believed it till your arrival, which hath brought me such happy news, and with so great secrecy too, from the General of my Restauration, WITHOUT CONDITIONS, even beyond our expectation here, or the

* "The Mystery and Method of His Majesty's Happy Restauration, laid open to Publick View, by John Price, D. D. One of the late Duke of Albermarle's Chaplains, &c. London, 1680." This remarkable and almost unknown historical work is reprinted in Baron Maseres's "Select Tracts relating to the Civil Wars in England," part ii. A more complete exposé of the iniquity of public men, and the mysteries of state, never appeared. It also proves that this nation owes the unrestricted return of Charles II. partly to the humours of *Mrs. Monk*. Thus has the fate of nations hitherto been influenced!

"belief of all our friends in England." The utility of confining the royal "prerogative" within the limitation of certain recognised principles had been formerly admirably expounded by Prynne, in his constitutional speech on the Conditions of the Isle of Wight Treaty, proposed to Charles I.* MILTON also, with a bold and prophetic spirit, (allowing for his prejudices against the monarchical form of government) dared to record his remarkable warnings,† that if the nation crept back to its former degradation "we may be forced "perhaps to fight over again all that we have fought, "and spend over again all that we have spent, but "are never like to attain thus far as we are now advanced; running headlong again into the same bondage: making vain and viler than the dirt, the blood of "so many thousand faithful and valiant Englishmen, "who left us in this libertie, bought with their lives; "losing by a strange after-game of folly, all the battles "we have wonne."

It must be recorded to the immortal honour of Sir Matthew Hale, that as member for the County of Gloucester, in the "healing Parliament" of 1660, which recalled Charles II., he moved that a committee might be appointed to look into the propositions that had been made, and the concessions that had been offered by Charles I. during the late war, that thence such propositions might be digested as they should think fit to be sent over to the King at Breda.

By an order of the Commons, on the Journals of the House, 28th of May, 1660, the Great Seal was ordered

* Old Parl. Hist. vol. xviii. p. 303 to 445.

† The Readie and Easie Way to establish a Free Common-wealth and the Excellence thereof, compared with the Inconveniences and dangers of readmitting Kingship in this nation. The Author J. M. London, 1660.

to be brought before them to be broken and defaced, which operation was immediately performed by a Smith, in the presence of the members, and the pieces of broken silver were given to the late Commissioners as their fees.*

The state of the Chancery during this convulsed period, of course, partook of the unsettled character of all the great national interests. Little business was brought before such a perpetually shifting jurisdiction; and the several Judges appointed were altogether unfitted for their employments. If Whitelocke had been honest and consistent, and not impressed by an inordinate love of antiquity and self interest, much effective reformation of the Court of Chancery might have been accomplished, notwithstanding the perpetual changes of parties and policy: but he was consistent only in his irresolution, inconsistencies, and desire of pleasing all parties; and his character is admirably summed up by Clarendon who says that "he had a nature that could not bear or submit to be undone."

The parliamentary discussion of these important legal subjects, particularly of the Chancery, necessarily gave rise to numerous publications; and it is much to be regretted that a selection of them comprehending the most valuable practical suggestions, has not been preserved in the collections of Law Tracts. It is, of course, impossible within the limits of a single volume to give any detailed account of their several arguments and propositions; but a few of them may be now referred to as well worthy of attention in the present times, and as containing much that would aid the present generation in any sincere plan for reforming the Court of Chancery.

* *Comm. Journ.* vol. viii. p. 150.

1. "England's Balme : or Proposals by way of grievance and remedy ; humbly presented to his Highness and the Parliament : towards the Regulation of the Law, and better administration of Justice. Tending to the great ease and benefit of the good people of the nation. By William Sheppard. London. 12mo. 1657."

This little volume is attributed to the learned author of the Touchstone, and in the preface he states that he had been summoned to the Metropolis, to aid in the projected plans for reforming the law. He apologises to his legal brethren for engaging in such an avocation, but reminds them that taking away the abuse will establish the use of the law, *stabilit usum qui tollit abusum*—and that rooting up the tares will not destroy the wheat. The observations on the Court of Chancery are contained in chapter xi. section 4, but the volume chiefly relates to the general state of the law.

Some ingenious and sensible propositions are contained in—

2. "Certaine Proposals in order to a new modelling of the Laws and Law Proceedings, for a more speedy, cheap, and equal distribution of Justice throughout the Commonwealth, among which, besides others, is briefly argued the great inconvenience which arises—

I. From the distinction of Courts, of Common Law, and Chancery.

II. By Extemporary Verdicts, Orders, and Decrees.

III. By the Judges, Juries, and Perjuries, not being liable to make full Restitution unto such as are injured by their perjury, or erroneous judgments ; together with their remedies, by Henry Robinson. London. 4to. 1653."

The Court had an able advocate in the author of—

3. "Considerations touching the Dissolving or taking away the Court of Chancery and the Courts of Justice de-

pending upon it, with a vindication or defence of the Law from what is unjustly charged upon it, And an answer to certain proposals made for the taking away, or alteration of it. London. 4to. 1653."

In this pamphlet it is contended that the laws are abused by the people: that the substitution of local courts for the one great hall at Westminster would be highly prejudicial to the state, and renew all the evils of the ancient petty and territorial jurisdictions; and that lawyers are necessary agents in a commonwealth.

Another work is entitled to considerable attention, as containing many able and practical commentaries on the different clauses in Cromwell's ordinance.

4. "A view of some part of the regulations of the Chancery, with the inconveniences and mischiefs, which contrary to the minde and good intentions of the authority which ordained, will inevitably follow upon it. Humbly presented to the Parliament. London. 4to. 1640."

A second vindication of the court, and in many respects an impartial review of its good and its bad practice, appeared under the title—

5. "The Continuance of the High Court of Chancery vindicated, to be absolutely necessary, (the abuses and corruptions being removed) and the removal thereof, and the perfect reformation of the proceedings in that Court, proposed in several bills weekly or more often intended to be published. By many Citizens and others of the Commonwealth, well knowing of such abuses. London. 1654."

This latter tract contains two valuable drafts of Bills—

1. For remedy against untrue and unjust Reports by Masters and other References. 2. For avoiding of many unnecessary hearings in Chancery, and mitigation of the charges in divers others: and speedy trial, and find-

ing out the truth of every deposition of which any doubt shall arise.

A very sensible vindication of Cromwell's ordinance for the regulation of the Chancery appeared under the title of—

6. "Second Considerations concerning the High Court of Chancery and the most excellent Ordinance for the regulation and limitation of that court, by Edw. Leigh, Gent. London. 4to. 1658."

The author of this ingenious little publication appears to have printed a former pamphlet, apprising the Parliament of the great injury that would infallibly result from the repeal or expiration of Cromwell's ordinance. His second considerations shew that his apprehensions were but too well founded, inasmuch as the former unnecessary and burthensome offices were revived, and as all the ancient abuses remedied by that ordinance had quickly sprung up again. He states that he was unfortunately experienced in the evils of Chancery litigation, having been many years "a suitor and sufferer in that court," whereby experience was beaten into him. He boldly asserts that the utility of the ordinance was never called in question except by the Lawyers, who had a corrupt interest in opposing and repealing it; and that from its first promulgation it was perseveringly beset by "the clamours of those late unnecessary officers of that court who aimed not at the good of their country, but their own unconscionable gain." The reduction of the number of the Six Clerks, and the abatement of the fees, Mr. Leigh says, "are the things that were struck at by the late Six Clerks, and other useless officers, whose pretence is, That their places, and the old fees are their freehold, and therefore ought not to be

taken from them; that they purchased their places, and that they are of great antiquity." This pamphlet is highly valuable as affording a practical exposition of the results of the two systems of equity, founded on the old practice and the ordinance of Cromwell. It is however worthy of remark, that we must judge of the imperfections of that celebrated document, and of its partial good effects, with considerable allowance, recollecting that the Protector was deprived of the assistance of the ablest lawyers in its construction, and met with their bigotted opposition in carrying its provisions into effect.

In 1656, a singular publication appeared, (in some copies of which the name of A. Boon is noted in manuscript as the writer,) under the title —

7. *Examen Legum Angliæ, or the Laws of England examined by Scripture, Antiquity and Reason. (Cujus Author Anagrammaticus est, 'Α νόμος Βόη ὁς Βαπύ.)* London. 4to. 1656.

This work is a general review of the Law and Jurisprudence of England, an exposition of their great defects, and of the necessity for amendment. The author states that it is the first book "extant of its kinde." He is evidently deeply imbued with the fanatical sentiments of the times, continually applying the favourite test of the old and new Testament scripture as the touchstone of perfect English law. The ninth and tenth chapters, which treat of the inconsistent difference in the principles and practice of Equity and Common Law, contain some particulars of the abuses of the Court of Chancery, and some remedial suggestions worthy of examination and partial adoption.

A still more illustrious name may be added to this imperfect list of the contemporary writers on corrective

jurisprudence, Lord Chief Justice Hale, author of "Considerations touching the Amendment or alteration of Lawes." This treatise is noticed by Burnet in his list of Hale's manuscripts, and was first printed by Mr. Hargrave in the collection of manuscript tracts relating to the Law of England. Unfortunately the chapter treating of the imperfections in and abuses of the different Courts of Justice is incomplete, excepting as far as relates to the County Court and the Court of Common Pleas. Some valuable extracts clearly proving the opinions of Hale will be found in the appendix, and the reader is referred to the excellent preface of Mr. Hargrave, another "authority," in favour of the necessity and importance of law reform.*

Sir Matthew Hale was also the author of a valuable treatise in favour of a general and district Registry, "shewing how useful, safe, reasonable, and beneficial, the Inrolling and Registering of all Conveyances of Lands may be to the Inhabitants of this kingdom." As this topic, however, will be more fully introduced and discussed in a subsequent chapter of this volume, and as the propriety and utility of the project became the subject of an extensive legal controversy, it is sufficient now to allude to the tract, as proof that this wise and disinterested lawyer was not a member of the Committee of law reform merely as the popular scheme of a political party, but that his heart and understanding were zealously engaged in aid of its great practical objects.

Two more publications only, on the abuses of the general system of Law, need be mentioned—

8. "A Vindication of the Laws of England as they are

* Appendix, No. 3.

now established, together with some Proposals to the Parliament for the Regulation of them. By a Lover of the Laws. 4to. London. 1659."

9. " Proposals for Reformation of Abuses and Subtleties in practice against the Law and in Scandall of it. By William Gery, Esq. of Grays's Inn. 4to. London. 1659."

With the exception of a few tracts on the Chancery controversy it may truly be asserted that no answer of any importance appeared in reply to these public impeachments of the corrupt state of the law, and that no counter authorities can be set off against the great names arrayed in the cause of its reformation. The sweeping plans of the commonwealth men of course created a strong band of enemies among the number of those in possession of the goodly inheritances of the law offices. The old argument of antiquity was their chief weapon, and all their reasoning was comprised in their title pages: * their antagonists they were pleased to style a parcel of " clay-pated, ignorant, green wits;" as if assertions were proofs, and nick names incontrovertible logic. In lieu of reasoning, lampoons and satirical poetry in abundance were vented against the advocates and plans of law-reform. It was gravely contended that the law abuses were necessary to keep men from contriving mischief in the Commonwealth. A quarto tract, entitled " The proposals of the Committee for Regulating the Law, both in sense, form, and practice, communicated to public view, by especial order and command,"† in the midst of its humour and forced ridi-

* Videlicet—" A lash for Law-haters, or a New Plea for the *Old Law*, extracted from Reason and Experience. By Albertus Warren. 4to. London. 1654 "

† Reprinted in the *Harleian Miscell.* vol. vi. p. 489.

cule on the law committee, speaks of the "Court of Iniquity, *alias* the Court of Chancery, where a man may be suspended and demurred in his just right, from generation to generation by the power of the purse." But the inimitable satire of Butler, in the following reign, is an annihilating set off against the ignorant humour of these laureat wits.

The corrupt state of the law was also a copious subject of Pulpit preaching by the fanatic Divines of these ultra religious days. A whole chapter, and a very amusing one, might be filled with the citation of their preposterous but zealous arguments. The Pentateuch and the Decalogue were the only codes that could righteously or wisely regulate the practice of the Courts of Common Law and Chancery; and all the difficult points of practice were to be decided by reference to cases in the Gospels or the Epistles. It is unnecessary to trace the causes of the Commonwealth fanaticism; every one versed in the history of the human mind will perceive them in the fierce collision of the Reformation with the long established religion of Rome: popular feeling, like the torrent of lava on the burning volcano whose ebullition down the steep precipice is uncertain till the moment of its bursting fulness, usually rushes in opposite directions.

These Puritan Lawgivers could not perceive that the Jewish law was of three distinct classes—*moral*, *political*, and *ceremonial*; that the jurisprudence and customs originated in the *peculiar* circumstances of the Jewish People and neighbouring nations; that they were founded on a theocracy or civil government in which the Jews considered GOD as their King, and themselves as his subjects; and that those circumstances in no wise related to the state of England in the seven-

teenth century. Superstition, however, concealed these simple facts from the mystified intellects of our evangelical ancestors.*

It cannot be necessary to apologise for the length and details of this chapter. The history of the law proceedings of the Commonwealth and Protectorate Government is highly important, and has never been fully investigated or collected into a digested narrative. The labour of discovering so many facts, hitherto dispersed in the voluminous journals of the Commons or buried in innumerable contemporary tracts, has been cheerfully undertaken from a consciousness that the insulted characters of the illustrious dead might be cleared from the misrepresentations which obscured their merit. And though last not least deserving of honourable record is the name and legal services of HENRY IRETON, who, educated in the Middle Temple in the science and practice of jurisprudence, early devoted a powerful and honest mind to free the English Law from the cumbrous forms and ancient abuses established by "custom grown blind with age."

The province of this volume excludes any disquisition on the few beneficial results which immediately succeeded the opposition to the Stuarts, and the labours of the Commonwealth men. It cannot be denied that their most sanguine expectations were never realized, and

* Numerous cases of individual hardship in Chancery suits were published, most of which were amply enveloped in the prolix and scriptural language of the day. The title of one will suffice the curiosity of most readers—viz. "The great Trap of George Booth, Henry Newman, John Bridge, W. Plimpton, James Brailsford, Barthol. Collier. With a True relation of their intrapping of RICHARD BYRT of London. Likewise, false swearers discovered, who make it their practice every Term to swear in Chancery, and all Courts else, to the great loss of many that go to Law, and to my loss for above £700. London. 1659." 4to. pp. 128.

that unfortunate consequences in many instances followed their ardent efforts. The causes of this grievous disappointment and ill success did not result from any lack of virtuous motives or ability in the promoters of the different plans of reformation; they are rather to be ascribed to the difficulties opposed by the effects of long continued *mis-government*, of Cromwell's usurpation and selfish designs, and to the state of society doubtless unprepared for forms and objects of government which anticipated the march of time. The evils attendant on all revolutions are consequent on pre-existing causes, and national regeneration is ever the work of time. Liberty was an exotic that could not then flourish in the soil and climate of England; but like the foreign plants, which by repeated propagation from seed, at length become inured to their new climate, it required to be nursed with long and diligent care until gradually enabled to thrive by its own native and unprotected vigour. One of the expurgated passages in Milton's History of England so happily and ingenuously alludes to the unfortunate events and mistakes of the times in which he took so prominent, so disinterested, and so noble a part, that a more apposite authority could not be cited.—“ Thus they, who of late were extolled as
 “ our greatest Deliverers, and had the People wholly
 “ at their devotion, by so discharging their Trust as
 “ we see, did not only weaken and unfit themselves to
 “ be dispensers of what Liberty they pretended, but
 “ unfitted also the People now grown worse and more
 “ disordinate, to receive or digest any Liberty at all.
 “ For stories teach us, that Liberty sought out of
 “ season, in a corrupt and degenerate age, brought
 “ Rome itself into a farther Slavery: For Liberty hath
 “ a sharp and double edge, fit only to be handled by

" Just and Vertuous men; to bad and dissolute, it
 " becomes a mischief unwieldly in their own hands:
 " neither is it completely given, but by them who have
 " the happy skill to know what is grievance, and
 " unjust to a People, and how to remove it wisely;
 " what good Laws are wanting, and how to frame them
 " substantially, that good Men may enjoy the freedom
 " which they merit, and the bad the curb which they
 " need."* The miscarriage however, of good designs,
 is no reason against their renewed prosecution: far
 from receding from the noble objects of the great cha-
 racters, whose names and patriotic exertions are the
 glory of British History, we should rather labour to
 remove the causes of former ill success. If Freedom
 slumbered till Despotism and Ignorance were weary of
 their ascendancy she would never rear her lofty head;
 the first efforts of genius frequently tend to premature
 introduction of discoveries and improvements, yet the
 Moral Philosopher and Speculative Legislator, though
 they may not succeed in all their plans, dig the founda-
 tion and erect the scaffolding of the future building; and
 it must ever be remembered that to those, who in their
 theories and researches anticipate the age they live
 in Posterity often becomes indebted for its distant
 blessings.

It would be irrelevant to detail many of the real
 national benefits which did originate in the Common-
 wealth and Protectorate policy; in the commanding and
 dignified relations of the kingdom with foreign powers,
 in the navigation acts and other important legislation.

* " Mr. John Milton's Character of the Long Parliament and assembly
 of Divines, in MDCXLI. omitted in his other works, and never before
 Printed, and very seasonable for these times." London. 4to. 1681.

An instance of immediate and effective legislative reform (a brief and worthy precedent for Mr. Peel,) may be cited in the terse and comprehensive wording of the Act passed in August, 1653, "for taking away Fines upon Bills, Declarations, and Original Writs," as follows,—
 "Be it enacted by this present Parliament, and the authority of the same, That from and after the 5th day of August, 1653, no Fines shall be taken upon Bills, Declarations, or Original Writs; but such Writs shall be from thenceforth issued, and such Bills and Declarations admitted and filed without taking any fine." Indeed we need no further evidence of the honest and masterly views of the leading men of that eventful age than is exhibited in their plans of legal reform, which with more time, and under happier auspices, might have conferred essential obligations on the country. And it would be equally ungrateful not to mention the admirable plan of Cromwell for reforming the constitution of Parliament, which, even Clarendon is obliged to confess "*was generally looked upon as an alteration fit to be more war-rantably made, and in better times.*"*

* Hist. Rebellion, b. xiv.

CHAPTER IX.

OF THE COURT OF CHANCERY,
DURING THE REIGN OF CHARLES II., A. D. 1660 TO 1685.

A Restoration is usually the most dangerous and worst of all Revolutions.—*Fox's History of James II. Introductory Chapter*, p. 8.

Truly, considering to how great a bulk the volumes and books of the Common Law have in process of time arisen, how many printed resolutions of the same cases or points, how many disagreeing reports there are touching the same matter, how many seeming contradictory opinions that would be explained or settled, how many titles are disused, it were to be wished that some complete *corpus juris communis* were extracted out of the many books of our English laws for the public use, and for the contracting of the laws into a narrower compass and method, at least for ordinary study. But this is a work of time, and requires many industrious and judicious hands and heads to assist in it.—*Sir M. Hale's Preface to Rolle's Abridgment*. 1668.

Touching the Equitable Jurisdiction, though in ancient time no such thing was known, yet it hath now so long obtained, and is fitted to the disposal of lands and goods, that it must not be shaken though in many things fit to be bounded and reformed.—*Hale's Jurisdiction of Parliaments*, chap. vi. *On the Chancery*.

THE "Monk's hood" having been taken off, Charles the Second returned to the land of his fathers, under circumstances in which a monarch of ordinary talents and integrity, and with counsellors of honest and patriotic purpose, would have built an immortal reputation. Allowed by the current of events to assume the monarchical power, without restrictions or political stipulations, he might have gained the credit of voluntarily conceding constitutional liberties and introducing poli-

tical changes and reforms, called for by the progress of time, which his miscalculating subjects neglected to bind him to perform. The reaction of public opinion, the anxiety of persons of property to see once more established a definite and permanent government, and the affability of the king on his return to his native country so entirely won the hearts of the people, that they thought nothing too much for them to grant, or for him to receive.* But Charles abandoned himself to selfishness and debauchery: the liberties of the country were trampled under foot; fulsome panegyrics bestowed on their violators, and insult and persecution heaped on every patriot who vainly endeavoured to stay the current of political corruption. Instead of a general amnesty and oblivion, consigning to forgetfulness the late troubles of the country, a treacherous and impolitic persecution was commenced against the leaders of the commonwealth party and the judges of Charles I. Such were the consequences of the restoration of the Stuarts, free from the obligation of respecting the acknowledged rights of the people; and vain were the subsequent endeavours of a chosen band of patriots to remedy this fearful and pregnant evil.†

* Welwood, p. 109.

† It is evident from Price's narrative (quoted *ante* page 179,) that Charles II. would have agreed to the Isle of Wight Concessions, had not Monk overtured to him his restoration *without* conditions. The advantages that would have resulted from these salutary restrictions on the prerogative and arbitrary power, are admirably described in Prynne's speech in parliament, Dec. 5, 1648. See *Old Parliamentary History*, vol. xviii. p. 303 to 445; and the publication of the Speech itself, in 4to. 1649, which passed through several editions. It is singular that neither Clarendon, Whitlocke, Rushworth, Sir P. Warwick, nor any cotemporary writer except Walker (*History of Independency*, part ii. p. 29) even allude to this important though prolix oration. Such is the dependence to be placed on party History!

To proceed with the history of the Court of Chancery ; it is certain that however wise and sincere the common-wealth plans to reform the law and the administration of the courts of equity, such disturbed and changing times were ill calculated to enforce rights or redress wrongs.—In a little 12mo. volume by John March, a barrister of Gray's Inn,* (dedicated to Bradshaw) we have some information in the fourth chapter, entitled, "whether the High Court of Chancery, as the practice is there, be not a very great grievance, and burthen to the common-wealth." After stating that he did not notice in detail the excessive number of officers of the court and their exorbitant fees, because those evils were apparently in course of redress, this law writer proceeds—"the first thing I shall touch upon, is the multitude of suits that are there pending, so that it is impossible (without the commissioners were more than men) for them to receive a convenient dispatch. I do acknowledge their great and indefatigable pains in that high and extraordinary judicature, for which the common-wealth stands very much obliged to them: yet I know as men, they cannot exceed their strength and ability.—This Court hath received a great addition, not of jurisdiction, but of practice, by taking away of the Court of Wards, that great and oppressive Court; as likewise, by the fall of that unnecessarie Court of Requests. So that the business of this Court is so great, and doth so much increase dayly, that the common-wealth will in a short time very much suffer thro' inevitable, not to be prevented, delay of justice." p. 59.—The author asserts that one great cause of the increase of business was the

**Amicus Republicæ.* The Common-wealth's Friend, or an exact and speedie course to Justice and Right, and for preventing and determining of tedious Law Suits, &c. London. 1651.

frequent false suggestions of Equity merely to hinder, and delay the execution of justice at common law. He proceeds—"Again, it seems to me, to be a great grievance and burthen to the Common-wealth, to have a resort in matter of Equity from a Court of Law to Chancery. We say in Law, *fructa fit per plura, quod fieri potest per pauciora*, it is vain and idle for a man to go about, when he may find a nearer way home. The Law loves not circuitry of action, why then should men be forced to a Court of Equity, when the case is pending before the Judges at Law? and why may not the matter of Equity (if any) be determined by them without such further trouble or wheeling about, which is no small charge and expence to the people? I know not but that they are in such case, the most proper Chancellors; and this will prevent a very great mischief and vexation to the people, which I have shown before, and that is of resorting to the Chancery upon pretence of Equity, whereas in truth, it is only to delay Justice: a thing then which nothing more frequent and usual." p. 62. He then suggests that to lessen and abate vexatious and impertinent suits in Equity, Plaintiffs should swear to their bills as Defendants are obliged to do to their answers. He also sensibly argues that "it seems very hard that men should not have costs of suit in some reason answerable to what they have necessarily expended in this court as well as at law:" he truly urges that for want of this wholesome provision the remedy of asserting rights is often worse than the disease of submitting to wrong, and frequently deters men from seeking the justice of the court.

A few months previous to the Restoration we find some remarks on the state of the law addressed to the

Rump Parliament by a nervous political writer.* he advises the national representatives—"No man can any longer say, *There is a Lion in the way*. God hath put the nation like wax into your hands, that you may mould and cast it into what form your Honours please: we are now *Rasa Tabula*, and your Honours may write what you please upon us."—In his chapter "of the regulation of the Lawes and the Lawyers" he chiefly attacks the unlimited extent and consequences of the law of primogeniture. He then denounces the prolixity and tautologies of conveyancers' deeds "now thro the fraud of lawyers so ambiguously penned that none but a sphinx in their mysteries is able to understand or riddle them." He states that the Lawyers every where amass large estates, and like the Egyptian plagues of locusts and caterpillars cover the face of the land; and that the hanging up of their gowns in Westminster Hall would be as acceptable a trophy in the eyes of the people as the Scotch colours. He urges a general and sweeping reformation of the laws, and that the lawyers be no longer allowed to make them with flaws and mysteries for the advantage of being interpreters, but that laws be in future facile and intelligible and published throughout the kingdom. Lastly, he argues in favour of county registers, and that courts of judicature be established in all the counties, to remedy "that great and long complained of grievance of the People's being constrained to undergo such sore and tedious pilgrimages from the furthest parts of the land to *London*, as if Justice had but one tribunal, or no other temple then what is erected in that single city."

The commencement and policy of the new reign did

* *A Modest Plea for an equal Commonwealth, &c. and Reformation of the Lawes, &c.* 4to. London, 1659.

not augur favourably for the reform of the law and judicial establishments. A curious proof how little the interests of justice were consulted, exists in the fact that Sir John Greenville, in his first negociation with Monk, "propounded to the General £100,000. per annum for ever, as his Majesty's donative to him and his officers, *with the office of Lord High Chancellor*, and Constable of England, for himself, and the nomination of any other the great officers of the Crown."* This bartering of the *seals* for a *crown* was a hopeful presage of the principles which regulated, in this reign, the patronage of places of public trust and utility.—The first steps of the new monarch and his counsellors were to reverse and annul all the acts of the Commonwealth and Protectorate; and especially, with indiscriminating jealousy, to repeal all the legislative enactments and reforms of the law and courts of judicature.† Among the regicides who suffered capital punishment we must not omit to mention Hugh Peters and John Oooke the celebrated Parliament Advocate, on the trial of Charles I.

* Price's *Mystery and Method of the Restauration*. 1680.

† Scobell's *Collection of Acts and Ordinances* (folio. 1658) contains nearly a complete digest to the year 1656. This volume may be justly termed the *Vindication of the Commonwealth Lawgivers*. The preambles and practical legal improvements displayed in many of the acts of this period, are an almost unknown proof of the sincerity and ability of the legislators of the republic. Their monarchical successors, however, could not permit *one* act of comparison to remain: the legislation was not destroyed as in itself bad, but because the legislators were "usurpers." The royalist poet Cleveland thus distinguishes between a *law* perfected by a King and the *Act of Parliament* without a King:—"An Ordinance is a Law still-borne, dropt, before quickend by the Royall assent: 'Tis one of the Parliament's by-blowes (Acts only being legitimate) and hath no more syre than a Spanish Gennet that is begotten by the wind."—*The character of a London Dtturnal*. 1647.

The former, in his defence, intimated that his zealous endeavours to reform the *law* formed the best justification of his public conduct, and was the chief ground of his present persecution. Cooke made the same remarkable observation. On the morning of his execution he was carried with Peters, on two sledges, to the scaffold, the bloody head of Major General Harrison being placed before Cooke; “which so far from producing the designed effect that he not only seemed to be animated with courage from the reflection he might make upon that object, but the people every where expressed their detestation of such usage. At the place of execution, among other things, *he declared that he had used the utmost of his endeavours that the practice of the law might be regulated, and that the public justice might be administered with as much expedition and as little expence as possible; and that he had suffered a more than ordinary persecution from those of his profession on that account.*” *—Whatever may have been the political sins of Cooke against the family of the Stuarts, certain it is that his services in the cause of the Commonwealth of England, were most valuable, particularly in his official situation as Chief Justice in Ireland, and his writings and exertions in the parliamentary committees for the reformation of the law were not less important. Cooke had, moreover, the distinguished merit of being the early and public advocate of legal improvements.†—The particular and sinister

* Ludlow, p. 368.—Tryal of the Regicides, &c.

† In page 126 *ante*, the christian name of *William* is erroneously printed for *John* Cooke as the author of the *Vindication of the Law*. Cooke was a Barrister of Gray's Inn, and several ingenious works, but tinged with the fanaticism of the times, attest the talent and integrity of his calumniated character. The greater number of his legal tracts, now very scarce, may be found in the library of the British Museum. See the catalogue.

interest of the lawyers to prevent the intended reformation of their trade, in all probability, occasioned the return of the Stuarts; for if Vane and Ludlow, in the Parliament of 1659 and the Committee of Safety, had not made a *sine quâ non* of legal reform, the lawyers would have thrown their powerful aid and influence into the scales of the republican party. Ludlow's account of the intrigues of the lawyers and the clergy to defend and secure untouched their mutual establishments, has been detailed in the preceding chapter; and Whitelocke unblushingly excuses his acting with the committee of safety, on the ground that he joined it purposely to prevent the contemplated alterations of the law.

It was in such adverse circumstances and perplexing difficulties that Clarendon, who had consistently followed the bad and the good fortunes of his monarch, came to fill the judicial office of the Chancery, and when he received the seals in England, had withdrawn from practice nearly twenty years. On the death of Sir Edward Herbert, the last exiled Lord Keeper of the Seals, and while Charles was residing in poverty and hopelessness abroad, Clarendon was pressed by the King to receive the honour of the appointment, more especially as the death of Cromwell had revived the hope of an early restoration. Clarendon is stated to have been unwilling to accept the office, which Charles pressed upon him, to relieve himself from the importunities of those who now crowded to solicit offices and honours from the rising sun of royalty. Sir Edward Hyde consented at length to receive the trust, "submitting to the King's pleasure." He thenceforth became the most active and judicious adviser of the king, and conducted with great sagacity and discretion the different negotiations and diplomacy which ultimately restored Charles to his throne. On

the 29th of May, 1660, he accompanied the king in his public entry into London.

The incessant and anxious toils of public business and political intrigues afforded Clarendon little time to devote himself to his judicial employment, and duly to perform his equity duties. On his entrance into office however, it is certain that with competent aid, in conjunction with Sir Harbottle Grimstone the Master of the Rolls, he framed some salutary and practical regulations for the better administration of the offices of the Masters in Chancery and the six Clerks, known under the name of "Lord Clarendon's Orders."* As most of the orders of this chancellorship have been adopted or superseded in the subsequent orders of his successors, it will be unnecessary and useless to detail them, or to examine their particular and comparative merits. It would also be irrelevant to the present object, historically to detail the cabals and party manœuvres so well known, which ultimately forced Clarendon to retire again into exile. A parliamentary impeachment of various articles of accusation was preferred against him, and he wisely removed from the court scenes of corruption, intrigue and ingratitude. One of the accusations affected his official integrity, charging him with having corruptly and illegally enriched himself by the sale of offices, and with having lent himself to the extortion of money in the forfeiture and renewal of corporate charters. To all these charges he made an elaborate defence. On the

* "Collections of such of the Orders heretofore used in Chancery, with such alterations and additions thereunto, as the Earl of Clarendon, Ld. Chan. and Sir H. Grimstone, Master of the Rolls, have thought fit to ordain and publish, for reforming of several abuses in the said court, &c." 12mo-eds. 1661, 1669, 1676, 1688. And see Beames' General Orders, p. 165.

accusation of official extortion, he replies—"Excepting the King's bounty I have never received or taken one penny, but what was generally understood to be the just and lawful perquisite of my office, by the constant practice of the best time; which I do (in my own judgment) conceive to be that of my Lord Coventry, and my Lord Ellesmere, the practice of which is constantly observed; although the office in both their times was lawfully worth double to what it was with me, and I do believe now is."*

Perhaps the most impartial character of Clarendon, in his office of Chancellor, is Burnet's, who writes†—"He was a good Chancellor, only a little too rough, but very impartial in the administration of justice. He never seemed to understand foreign affairs well, and yet he meddled too much in them. He had too much levity in his wit, and did not always observe the decorum of his post. He was high, and was apt to reject those who addressed themselves to him, with too much contempt. He had such a regard to the king, that when places were disposed of, even otherwise than as he advised, yet he would justify what the king did, and disparage the pretensions of others, not without much scorn; which created him many enemies. He was indefatigable in business, though the gout did often disable him from waiting on the king: yet during his credit, the king came constantly to him when he was laid up by it." In the abstract, he was a servant and dependant of the king's, and attended more to political than judicial business, affording a memorable example of the necessity of separating the two charac-

* *Lords' Journals*, 1667. Clarendon's Petition.

† *Burnet's Own Times*, vol. i. p. 92.

ters, and thereby securing honesty and undivided attention to the duties of a judge, in lieu of servile complaisance and meddling in the political objects of royalty. By a note of Speaker Onslow's to the last edition of Burnet,* the annotator writes, "I was told by the Master of the "Rolls, (Sir Thomas Clarke) that the Lord Clarendon "never made a decree in Chancery without the assistance "of two of the judges:"—which if true, however it may speak for the official qualifications of the Chancellor, substantiates his humility and good sense.

From a passage in his life, it appears that Clarendon, when Mr. Hyde, early enjoyed a professional practice and reputation beyond his years, and acquired the esteem and acquaintance of the most eminent lawyers of his day.† In his Chancellorship the Duke of Ormond privately urged upon him to resign his judicial office and to accept the premiership, stating that all his best friends "wondered that he so much affected "the post he was in, as to continue in the office of Chancellor, which took up most of his time, especially all the "mornings in business that many other men could discharge as well as he."‡ Clarendon however was too well acquainted with the fickle and ungrateful character of Charles to risk such a change, and answered Ormond that he would sooner be preferred to the gallows at once. As some proof of the truth of Burnet's reflections on Clarendon's subserviency to Charles, the biography records that Lord Ashley having obtained a grant from the king of the treasurership of prize money, applied to Clarendon as chancellor to seal the grant. Cla-

* Oxford ed. 1823. vol. i. p. 161.

† Clarendon's Life. folio ed. 1759. p. 14.

‡ Life. Continuation. p. 45.

rendon refused, as "destructive of the king's service and the right of other men." The King sent him a positive order to sign, "which he could no longer refuse."*

An instance of the inconvenience and inconsistency of the two offices of Chancellor and Speaker of the house of Lords uniting in the same person, is recorded in the Journals of the Lords, vol. ii. p. 51, 1 June, 1660, as follows—"The Lord Chancellor being this day to sit in the Chancery, the house appointed the Earl of Manchester to be speaker *pro tempore*."

On the disgrace and exile of Clarendon a common law judge was promoted to the vacant chancellorship.

"The seals were given to Sir Orlando Bridgman, lord Chief Justice of the Common Pleas, then in great esteem, which he did not maintain long after his advancement. His study and practice lay so entirely in the common law, that he never seemed to apprehend what Equity was: nor had he a head made for business or for such a court."† A similar character is bestowed upon him by another historian—"The seal was given to Sir Orlando Bridgman as Lord Keeper, who was, until some time after he had it, looked upon as a very honest and able lawyer, but upon trial proved to be too weak for so weighty an employment."‡ Roger North, in the life of Lord Keeper Guilford, confirms the fact of his inefficiency as a chancery judge in the following passage—"He had been a celebrated lawyer, and sat with high esteem in the place of Lord C. J. of the *Common Pleas*. The removing him from thence to the *Chancery*, did not at all contribute any

* Ibid. p. 244.

† Burnet, vol. i. p. 253.

‡ Life of James II. vol. i. p. 429.

“ encrease to his fame, but rather the contrary ; for he
 “ was timorous to an impotence, and that not mended by
 “ his great age. He laboured very much to please every
 “ body, and that is a temper of ill consequence in a
 “ judge. It was observed of him that, if a case ad-
 “ mitted of diverse doubts, which the lawyers call points,
 “ he would never give all on one side, but either party
 “ should have somewhat to go away with. And in his
 “ time, the court of Chancery run out of order into
 “ delays, and endless motions in causes ; so that it was
 “ like a field overgrown with briars. And what was
 “ worst of all, his family was very ill qualified for that
 “ place ; his lady being a most violent intrigues in bu-
 “ siness, and his sons kept no good decorum whilst they
 “ practised under him ; and he had not a vigour of mind,
 “ and strength to coerce the cause of so much disorder
 “ in his family.”* In a subsequent page the same
 amusing writer again remarks—“ The Lord Bridgman,
 “ who was a very good common law judge, made a very
 “ bad chancellor. For his timidous manner of creating
 “ and judging abundance of points, some on one side,
 “ and some on another ; and if possible, contriving that
 “ each should have a competent share, made work for
 “ registers, solicitors, and counsel, who dressed up
 “ causes to fit his humour.”† It is however highly to
 the credit of this Chancellor that he was not sufficiently
 pliable for these corrupt times. Burnet states‡ “ that
 he had lost all credit at court : so they were seeking an
 occasion to be rid of him, who had indeed lost all the
 reputation he had formerly acquired, by his being ad-

* *Own Times*, vol. i. p. 535. See also *Salmon's Examination*, vol. i. p. 662.

† *Lord Keeper Guilford's Life*, 4to ed. 1742, p. 88.

‡ *Ibid.* p. 198.

vanced to a post of which he was not capable. He refused to put the seal to the declaration (of indulgence) as judging it contrary to law. So he was dismissed, and the Earl of Shaftesbury was made Lord Chancellor." North, in his other historical work, gives a similar account of these transactions. "There were "some shrewd difficulties to be got over; one was the "commission of martial law; another an injunction to "be granted in Chancery to stop suits at law against "the bankers, upon the equity of public necessity. The "lord keeper Bridgman was pressed, but proved restive "on both points. He for the sake of his family, that "gathered like a snow ball while he had the seal, would "not have formalised with any tolerable compliances; "but these impositions were too rank for him to com- "port with."* The Chancellor consequently kept his own conscience, but lost the keeping of the king's; indeed, it seems that few persons in these bad times could afford to keep *one* conscience, much less two.

Under the date of the 18th June, 1668, an order was made by Bridgman and Grimstone, for the better regulation of the office of the six clerks, and for settling the differences which had arisen between the six clerks and the under-clerks.†

The above remarks and citations on the judicial character of Bridgman, apply exclusively to his ability and conduct in the Chancery: they are not meant to depreciate the common law reputation of a man whose legal arguments in one case alone Hargrave pronounces to "give a vast idea both of his learning, talents, and industry,"‡ and whose "profundity of learning and

* North's Examen. 4to. 1750. p. 38.

† Beames, p. 224.

‡ Hargrave. Pref. to Hale's Jurisdiction, p. 139.

extent of industry"* were so highly eulogised by the late Lord Ellenborough.

Some judicial business was well administered at this period, for it is recorded of Sir Leoline Jenkins, that in two years (1665-6) he gave 436 final sentences as Judge of the Admiralty Court, besides a previous account in writing, by way of report to the Lords Commissioners, in most cases.

On Bridgman's resignation of the seals, in November, 1672, the office of Lord Chancellor was conferred on the earl of Shaftesbury, who though a lawyer by education had never practised. His lordship's competency to fill that important situation was, however, by no means so necessary to those who preferred him, as his skill in political intrigue. Burnet, in one of the recently restored passages of his history, describes him as having "*no regard to either truth or justice: he*" "was not ashamed to reckon up the many turns he" "had made; and he valued himself on the doing it at" "the properest season and in the best manner, and" "was not out of countenance in owning his unsteadiness and deceitfulness.†" The *slang* of his political contemporaries nick-named him "*Lord Shiftsbury*." North writes, "It was no new device to shove men" "out of their places, by contriving uncomfortable hardships to be put upon them, and then bespeaking the" "succession for themselves, by officious undertaking to" "do all that was required of and declined by them." "And it was no less frequent in such cases, after the" "point gained, to refuse doing what was the condition" "of the advancement, and in the mean time watch for" "handles for such refusal, and, at last seek shelter by

* East's Reports, vol. xiv. p. 134.

† Burnet's Own Times, vol. i. p. 165.

“turning into the adverse party. It was a *Whitehall*
 “maxim in those days, that places were not to be kept
 “by the same means as gained them. Now, whether
 “the Earl of Shaftsbury aided himself by this art to
 “get into the place of Lord Chancellor or not, if we
 “seek no deeper than mere outside, and with salvo to his
 “more abstruse reaches, may with more than probability,
 “be resolved in the affirmative.”* From a subsequent
 passage in North it would appear that Lord Shaftes-
 bury’s common sense was shocked by the absurdity
 of Chancery procedure. “After he was possessed of
 “the great Seal, he was in appearance the gloriest man
 “alive: and no man’s discourse, in his place, ever flew
 “so high as his did, not only against the House of
 “Commons, but against the tribe of the Court of
 “Chancery, Officers and Counsel, and their methods of
 “ordering the business of the Court. And for the
 “Chancery he would teach the bar that a man of sense
 “was above all these forms.”† The same writer in the
Examen, insinuates strongly the dishonesty of Shaftes-
 bury’s decrees in the libertinism and party interest which
 influenced him on the bench. He says, “merchandable
 work” was frequently exchanged for “justice,” and that
 amidst all the corruptions with which Shaftesbury was
 encompassed, “we must look for a philosopher in
 earnest, to resist so many powerful charms.” North is
 much scandalized by Shaftesbury’s disregard of the
 ancient judicial costume. “His lordship regarded cen-
 “sure so little, that he did not concern himself to use
 “a decent habit, as became a judge of his station. For
 “he sat upon the bench in an ash coloured gown, silver
 “laced, and full ribboned pantaloons displayed without

* *Examen*. p. 39.

† *Ibid* p. 64.

“any black at all in his garb, unless it were his hat, &c.”* It is however very doubtful whether any tailor could have made Lord Shaftesbury a good chancellor, who had never been brought up to the business, and who took no pains to remedy his disabilities. If the following account of his conduct in the court is even partially correct, the interests of the suitors must have been woefully compromised in his chancellorship.—

“I noted before to what an height his lordship’s discourse mounted, about his future government of the Chancery. He slighted the bar; declared their reign at an end. He would make all his own orders, his own way, and, in his discourse trampled on all the forms of the court. And, to be as good as his word, at his first motion day, although the counsel (as always out of respect to the new judge) were easy, and inclined of themselves to yield to what was fit to be ordered, and not to perplex him with contention upon forms; yet he would not accept of their civility, but cut and slashed after his own fancy; and nothing would down with him, that any of them suggested, though all were agreed upon the matter. They know little, that perceive not the difficulty of ordering matters in

* Examen, p. 60.—North relates a droll anecdote of the Earl’s fancy, in Hilary, 1679, of opening the term with *equestrian* pomp. All the Judges and King’s Counsel were put upon horses, and paraded through the streets, “but when they came to straights and interruptions, for want of gravity in the beasts, and too much in the riders, there happened some curvetting, which made no little disorder. Judge Twisden, to his great affright, and the consternation of his grave brethren, was laid along in the dirt: but all, at length, arrived safe, without loss of life or limb in the service. This accident was enough to divert the like frolic for the future, and the very next term after, they fell to their coaches as before.”—p. 57.

" Justice interlocutorily, upon the strength of abstract
 " reasoning only, without help of stated rules, and
 " methods prefixed by practice and experience. But his
 " Lordship was of another sentiment, and intended the
 " Bar should know it. They soon found his humour,
 " and let him have his caprice; and after, upon notice,
 " moved him to discharge his Orders; and thereupon,
 " having the advantage, upon the opening, to be heard at
 " large, they showed him his face, and that what he did
 " was against common justice and sense. And this
 " *Speculum*, of his own ignorance and presumption,
 " coming to be laid before him every motion day, did so
 " intricate and embarras his understanding, that, in a
 " short time, like any haggard hawk that is not let sleep,
 " he was entirely reclaimed. And, from a trade of per-
 " petually making and unmaking his own Orders, he fell
 " to be the tamest Judge, and, as to all Forms and
 " course, resigned to the disposition of the Bar, that
 " ever sat on that Bench."* Dryden has given a laureat
 character of his lordship's merits as an equity judge, in
 the picture he has drawn of him in his Absalom and
 Ahitophel, and his judicial administration is lauded in
 " Rawleigh Redivivus, or the life and death of Anthony
 Earl of Shaftesbury," (p. 72.) but poets and political
 partizans cannot be accounted impartial judges.

On the seals being taken from Shaftesbury, in 1673,
 after a short dynasty of nine months, they were
 given to Finch, then Attorney General, and afterwards
 created Earl of Nottingham. Burnet gives a mixed
 character of him: " he was a man of probity and well
 " versed in the laws; but very ill bred and both vain
 " and haughty, &c. He thought he was bound to justify
 " the court in all debates in the house of lords, which he

* Examen. p. 58.

“ did with the vehemence of a pleader, rather than the
 “ solemnity of a senator. He was an incorrupt judge :
 “ and in his court he could resist the strongest applica-
 “ tion, even from the king himself, though he did it
 “ no where else.”*

Blackstone eulogises Lord Nottingham as “ endued
 “ with a pervading genius that enabled him to discover
 “ and pursue the true spirit of justice, notwithstanding
 “ the embarrassments raised by the narrow and techni-
 “ cal notions which then prevailed in the courts of law,
 “ and the imperfect ideas of redress which had pos-
 “ sessed the courts of equity. The reason and neces-
 “ sities of mankind, arising from the great change in
 “ property, by the extension of trade and the abolition
 “ of military tenures, co-operated in establishing his
 “ plan, and enabled him in the course of nine years to
 “ build a system of jurisprudence and jurisdiction upon
 “ wide and rational foundations ; which have also been
 “ extended and improved by many great men, who have
 “ since presided in Chancery. And from that time to
 “ this, the powers and business of the court have in-
 “ creased to an amazing degree.”†

Dryden or Tate also poetise Finch, in the second
 part of *Absalom and Ahitophel* :

Our Laws, that did a boundless ocean seem,
 Were coasted all and fathomed all by him.
 No rabbin speaks like him their mystic sense,
 So just and with such charms of eloquence ;
 To whom the double blessing does belong,
 With Moses' inspiration Aaron's tongue.

* Burnet. *Own Times*, vol. ii. p. 37. See also his character by Whar-
 ton, in the *True Briton*, No. 69.

† *Commentaries*, B. iii. c. 4.

Although most of the legal writers bear testimony to the judicial reputation and ability of Finch, North gives quite an opposite character. "The Lord Nottingham, formerly Attorney-General, came in and sat there a great many years. During his time, the business, I cannot say the justice, of the Court flourished exceedingly. For he was a formalist, and took pleasure in hearing and deciding; and gave way to all kinds of motions the counsel would offer; supposing that, if he split the hair, and with his gold scales, determined reasonably on one side of the motion, Justice was nicely done. Not imagining what torment the people endured, who were drawn from the law and there tost in a blanket."* It will be unnecessary and unsatisfactory to detail the various opinions, expressed by subsequent judges, on the soundness of the decrees of Lord Nottingham, and the general character of his equity administration, because in some points a contrariety of judgment exists: it is thought by some eminent lawyers that he extended too widely the jurisdiction of the court. Various orders in Chancery were made at different periods by this chancellor, but none materially affecting the practice or improvement of the court.†

Lord Nottingham was the author of some well-known historical and legal publications, and Mr. Hargrave‡ notices with great commendation several valuable manuscripts on the court of chancery and the principles and practice of equity, in the possession of the Legge family, Lord Nottingham's descendants. In Mr. Hargrave's learned preface, to his edition of Hale on the jurisdic-

* Life of L. K. Guilford, p 197.

† See Beames.

‡ Hargrave's Hale, pref. p. 152.

tion of the House of Lords, the equity and appellate jurisdiction of that branch of the legislature, and the particular opinions and public conduct of Lord Nottingham in some memorable questions affecting it in the reign of Charles II. are too fully investigated and reviewed to require any mention or detail in these pages. This chancellor was subservient to the purposes of the King and the encroachments of *prerogative*, but he was certainly most learned in his profession and most assiduous in his devotion to the business and interests of the suitors in his own peculiar court. It must not be omitted to be recorded that Lord Nottingham was one of the few dignitaries of the law, who conscientiously bestowed the church patronage of the chancellorship on clerical worth and merit. His honest anxiety on this account cannot be displayed in more dignified sentiments than those extant in his own letter to his chaplain Dr. Sharpe, (afterwards archbishop of York) whose advice he generally followed in the disposal of the preferment—

“The greatest difficulty, I apprehend, in my office, is the patronage of ecclesiastical preferments. God is my witness that I would not knowingly prefer an unworthy person; but as my course of life and studies has lain another way, I cannot think myself so good a judge of the merits of such suitors as you are; I therefore charge it upon your conscience, as you will answer it to Almighty God, that upon every such occasion, you make the best enquiry, and give me the best advice you can, that I may never bestow any favour upon an undeserving man; which if you neglect to do, the guilt will be entirely yours, and I shall deliver my own soul.”* No argument or language

† Newcome and Todd's Lives of Archbishop Sharpe.

could more pointedly expose the anomaly of thus blending spiritual and temporal affairs in continuing this branch of the labour and profit of the English Chancellorship. The above extract is a beautiful specimen of the unaffected conscientiousness and eloquence of Finch. He was no less distinguished for forensic eloquence, having been eulogised to posterity as the English Cicero or Roscius. Evelyn calls him the smooth-tongued solicitor, and he was generally known by the name of "silver-tongue:" but even on his accomplishments his contemporaries differ, for Burnet says, "that his eloquence was affected, laboured, and too constant on all occasions, and that he lived to find it much despised."*

On the death of Lord Nottingham, in 1682, the seals were given to Francis North, afterwards created Lord Guilford. He had successively filled the offices of Attorney General and chief justice of the Common pleas. On the vacancy of the latter situation by the death of Vaughan, North's biographer narrates, that North "had but one scruple, which made him a little deliberate about his acceptance; and that was the difference of profit; for the attorney's place was (with his practice) near seven thousand pounds per annum; and the cushion, of the Common pleas, not above four thousand pounds." In accepting the chief justiceship however, North might expect that he was on the high road to the seals. Burnet in recording that North obtained the latter, says "he had not the virtues of his predecessor: but he had parts far beyond him: they were turned to craft: so that whereas the former seemed to mean well even when he did ill, this man was believed to mean ill even when he

* Burnet, Own Times. vol. ii.

did well.”* Burnet’s character of him however is doubtless tinctured with political prejudice. Sir John Dalrymple represents Lord Guilford as one of the very few virtuous characters which are to be found in the history of Charles the second;† and Roger North asserts, that the author of one of the vilest written libels in those times, was reduced, for want of something worse, to the calling him *sly boots*. In politics the Lord Keeper will of course be judged according to the political bias of his jurors; but on a careful examination of his *judicial* character and merits, there are certainly very few *facts* to impeach the favourable representation of him by his brother, the historian of the family. As that biography furnishes much important information on the state of the court of chancery at the latter end of this reign, a copious use will be made of its pages.

The biographer gives a curious account of the negotiation for the seals, which North would not consent to accept without a pension was added, “for the charge of living in that high station was not answered by the ordinary profits of the seal.” It appears that Lord Rochester, lord high treasurer, in an economical temper, urged North to accept the seal and “rely upon his majesty’s goodness, who doubtless would do better things in a way of bounty than upon terms.” But Lord Guilford was no political gander: his biographer says “these and other court syllogisms were fitter for chickens that would peck at shadows than for his lordship.”‡ Ultimately he obtained a pension of £2,000

* *Own Times*, vol. ii. p. 333,

† Dalrymple’s *Memoirs*, vol. ii. preface.—Dalrymple’s *Appendix*. p. 53.—Evelyn’s *Memoirs*, vol. i. p. 513.

‡ Lord Guilford’s *Life*, p. 194.

per annum; "and then his lordship seemed content to accept, and the King came, and put the seal (in the purse) into his lordship's hand, saying *Here, my Lord, take it, you will find it very heavy.*" The first biographical remark, in his life, on his acceptance of the chancellorship, is a singular commentary on the present hopeless labour of the office. "By his acceptance of the "great seal, he became as before of the law, so now of "equity a chief, or rather sole Justice. And more than "that, he must be a director of the English affairs at "court, as chief minister of state with respect to legalities, "for which he was thought responsible. So what with "Equity, Politics, and Law, the career and anxieties of "his lordship's life were exceedingly encreased: for "either of these provinces brought too much upon the "shoulders of any one man, who cordially and conscientiously espouseth the duty required of him to be "easily borne."* If such was the responsibility of this office in the year 1682, what must be its pressure in 1827? The weight of the burthen on Lord Guilford's mind Roger North records emphatically, and in italics, "not long before his lordship's death he told me, and "diverse other of his friends, *that he had not enjoyed one easy and contented minute since he had the "seal!*"†

Lord Guilford, by his long practice in the court, as an advocate and draftsman, and occasionally as an assistant of Lord Nottingham, was better qualified for the office than any of his predecessors: "the business of the chancery was easy to his lordship, except only when his time was retrenched so that he could not sufficiently attend to it." On his promotion he was painfully sen-

* Life p. 197.

† p. 195.

sible of the evils of the court, and desirous of remedying them. "His lordship was sensible of the prodigious
 "injustice and iniquitable torment inflicted upon suitors
 "by vexatious and false adversaries, assisted by the
 "knavish confederating officers, and other chicaners
 "that belong to the court. He was no less desirous
 "heartily to apply all the remedy he was able to so
 "malignant a disease, of which he had had full experience; and he had frequently observed it in the course
 "of his practice. For the lord keeper Bridgman and
 "lord Nottingham, gave all liberty to counsel and officers; so that then the not very commendable trade of
 "the court ran high."* He resolved to reform the abuses of the system—"his lordship knowing how
 "much the suitors endured by this flourishing court,
 "and having no content in any thing but the substance
 "of justice, and dispatch of the suitors, and ever
 "accounting that unreasonable delays were the same in
 "the mean, as injustice was in the end; and that it often
 "made the suitor quit his right, rather than live upon
 "the rack in pursuing it; bent his thoughts to compass a tolerable regulation of the court."† He did not, however, immediately develope his meritorious intentions and plans, but confined himself, at first, to a few corrective improvements, which naturally presented themselves on particular occasions, "lest the bar, the officers and the solicitors should confederate and demur, and by making a tumult and disturbance, endeavour to hinder the doing any thing of that kind, which they would apprehend to be very prejudicial to their interests."‡ He first began to curtail the motions for

* Life of Lord K. Guilford, p. 198.

† Ibid. p. 198. ‡ Ibid. p. 198.

accelerating and delaying final hearings, "and this lopped off a limb of the motion practice." He considered that the rules of the court allowed time enough for all parties to proceed or defend, and he refused to occupy the time of the court with perpetual interlocutory motions: either the practice of the court was good, and there was no need of such delaying and expensive motions; or it was defective and ought to be amended. He discountenanced especially exceptions to the Master's Reports, and ordered parties to shew any errors to the master originally, and not to carry on the old trick of getting costs on exceptions, and delaying all the real enquiry and merits of the suit. He was a great enemy to injunctions restraining common law process, and would never allow the usual injunction of course to remain, merely because answers were excepted to; but he required that counsel contending to continue an injunction, should shew that the answer was insufficient in a material point. He retrenched the general mass of interlocutory orders.

"His Lordship also set himself to stop the superfetation of Orders. And they were a subject of his daily reprehension, for the Causes came often to an hearing with a file of Orders in the Solicitor's bundle, as big as the common prayer Book, for commissions, injunctions, publications, speedings, delayings, and other interlocutories; all dear ware to the client in every respect. But in a few terms his Lordship reduced the quantities; for he was strict to the observance of his Rules; and for the most part refused to make orders nisi, &c. as commonly was prayed when notice was not given of the motion; but held the Solicitors strictly to their notices to be made appear by affidavits (and those to be filed) or they took nothing by their motion. Nor would he without apparent equity demonstrated, grant any thing to

divert a cause out of its due course. And thus the tricking sort of practice, so much used in the Court formerly was greatly diminished. And the solicitors were fearful of using art; for being taken napping they never escaped sharp reproof, and the cause fared no wit the better for it, and their own credit suffered.

“ His Lordship set his face also against the infinite delays by rehearings, re-references and new Trials; in all which cases, he was so difficult that nothing but the plainest reason in the World, or rather necessity drew him to yield to grant them.”*

The new chancellor especially directed his reforming views to the state and mal-practices of the Register's office, a branch of the court which has always needed examination and amendment.

“ The last instance of his Lordship's care of the Suitors was to quicken the dispatch at the Register's Office, and (if possible) to break the neck of those wicked delays used there. This was the hardest matter to redress that belonged to the Court. The Registers is a patent office, and the poor men, the deputies, come into their employ upon very hard terms, and the charge of presents and new years' gifts adds to the weight upon them, so as they are forced to bush about for ways and means to pay their rent and charges, and gather an estate, as they think must be done, in a few years; wherein they are not wanting to use their best endeavour, lest they suffer in the reputation of their skill. And accordingly scarce an order passeth without bribes for expedition in that quarter; and that is an article in the Solicitor's bill, as much of course as the fee for the order. His Lordship used to chide them publicly when justly complained of (and it could scarce be otherwise than justly) and also be very ready and easy to admit of complaints. And to prevent the colour they used

* Life of L. K. Guilford, p. 201.

for delay in Cases decreed upon points nicely decided, and also to prevent motions for settling such orders, which often was done to jog the matter again, and see if the opinion of the court would alter, his Lordship hath frequently ordered the register to attend him in the afternoon and take the ordering part penned by himself. And his Lordship was desirous, for his own satisfaction, in many cases to do so; for if the reasons of his decree were special, and such as came not under every cap, he cared not to leave the expression of them to the precipitate dispatch of a blundering Register. At length the Register finding what was agreeable to his Lordship's mind, and what kind of orders he was careful in pronouncing, thought fit, of their own accord, in such cases to attend his Lordship with their penning, and receive his Lordship's sense and corrections; and he always took it well when they did so, and was never uneasy to them. And the memorable Register, Mr. Henry Devenish was very well thought of by his Lordship for his candid application to him in that kind.*

Lord Guilford bestowed a personal attention on the drawing up of his orders and decrees, conformably with the principles on which his judgments were founded.

“ It was his Lordship's manner when he sat in the Court, to hold in his hand the paper of causes; and if any thing moved in his thoughts considerable, either towards regulation of abuses, improving the forms and course of the Court, or (in the hearing of causes) of nice reason and difficult to determine, he called for the register's pen, and wrote it upon the day paper. He was much used to write upon his hand and could do it very steadily; and when he came home, he laid by the paper with others he had so wrote upon, that if he would form a more solemn report of the Case, he had

the hint easily to do it. But he might also have another end in it; for if (as was touched before) a decree was pronounced with exquisite terms and distinctions, his Lordship did not always leave the drawing of the order to the register; for if he mistook the sense of the Court, then certainly followed Rehearings or motions to settle the order; and sometimes the Register himself, if he doubted, would come to his Lordship to explain his sense to him. But his chief care of this kind, was when the subject matter of the cause was touchy, and great men, or great parties concerned themselves in it, and there might afterwards follow some calumny or complaint.”*

Lord Guilford did intend to have drawn up a well considered and digested set of rules and orders for a more thorough and sweeping regulation of the practice, “which had gone a great way towards purging out the peccant humours of the court;” but the short period of his chancellorship did not allow him sufficient time to realize his praiseworthy resolves: indeed, he may be truly said to have fallen a victim in the cause of justice; North tritely observes that he cannot call Lord Guilford’s promotion to the seals a *preferment*, which “in truth (and as his lordship understood) was the decadence of all the joy and comfort of his life; and instead of a felicity, as commonly reputed, it was a disease, like a consumption, which rendered him heartless and dispirited, till death came, which only could complete his cure.”†

The arrear of business was a constant pressure on his mind, and from the following passage appears to have cost him his life.

“Nothing sat heavier upon his spirits, than a great arrear of business, when it happened; for he knew well

* Life, p. 205.

† Ibid. p. 194. Examen. p. 514.

that, from thence, there sprang up a trade, in the Register's Office called Heraldry, that is buying and selling precedence in the paper of Causes, than which there hath not been a greater abuse in the sight of the sun. If men are not forward, the officers know how to make them come on and pay; for they will expressly postpone the unprofitable customers, and so bring them to a sort of redemption. Therefore if the paper of Causes is not well watched by the Court, and the Officers sometimes checked (for which, at best, there will be occasion enough) no man without a vast expence, shall know surely when his cause will come on. And as a poor Treasury makes a rich Treasurer, so this grievance is greatest, when the Court itself wants dispatch. For the Causes left one day, are Remanets to the next, and so on to the next, that there are attendances enough on that account. But, when, over night, a man sees his Cause the first in the Paper, and next morning finds it at the bottom, his disappointment is great; and he will be told that, without a touch of purchaseable heraldry, he will never be sure of his time. I have heard his Lordship say that he never slept well if in his paper over night, he found a great arrear of Causes: So concerned was he, lest he might not be able to dispatch them. And according to this compassionate intention, he laboured continually to retrench superfluities, as well in the modes of the Bar practice as in the passing Orders, and other office dispatches. By which means at length he got the mastery of the Court; and his remanets (if any,) were few, and a moderate day often spent them, and then his heart was at ease. This continued till the Parliament and (more unhappily) his own weakness, came on, and made him unable to continue that close application to the business of the Court, and for want of due time allowed for hearing of Causes, the reins of the Court grew loose, and the Paper became loaded with Remanets, which to see was of itself, to him a sickness. And I am confident it was one, and not the least ingredient

in bringing forward upon him that fatal distemper, which after it had once seized, never left him till he died.”*

Although Lord Guilford survived the accession of James II., and retained the seals, yet the history of his chancellorship is more properly concluded in the former reign. From the full details of his judicial career given in this chapter, the deplorable state of the court is manifest. The lord keeper is accused by some contemporary writers of having aggravated the evils of the system, and of corruption in his high office. Burnet dismisses him in the same bitter spirit in which he introduced his name. “The Lord Guilford, North, was now dead. He was a crafty and designing man. He had no mind to part with the great seal; and yet he saw he could not hold it without an entire compliance with the pleasure of the court. An appeal against a decree of his had been brought before the lords in the former session: and it was not only reversed with many severe reflections on him that made it, but the earl of Nottingham, who hated him, because he had endeavoured to detract from his father’s memory, had got together so many instances of his ill administration of justice, that he exposed him severely for it. And it was believed, that gave the crisis to the uneasiness and distraction of mind he was labouring under. He languished for some time; and died despised and ill thought of by the whole nation.”† It is extremely difficult, at this distance of time, and in the absence of all the chief facts on which these accusations were founded, to discriminate between truth and falsehood, or accurately to es-

* Life, p. 205.

† Burnet, Own Times, vol. iii. p. 84.

timates the character of Guilford. It is indisputable however from the foregoing pages, that the lord keeper was sincerely interested in a reform of the general system of law: perhaps, as he got older, the ardour of his earlier years declined; and when he obtained power he either experienced the influence of it on his own integrity, or he discovered and was daunted with the difficulty of compassing innovation and amendment. When lord chief justice of the Common pleas, North asserts "that he bent his thoughts very much to regulating what was amiss in the law. For it is impossible but, in process of time as well from the nature of things changing, as corruption of agents, abuses will grow up; for which reason, the Law must be kept as a Garden, with frequent digging, weeding, turning, &c. That which, in one age, was convenient, and perhaps, necessary, in another, becomes an intolerable nuisance."* He was accustomed to commit to paper "hints of amendments in the law," and among his papers were found several similar draughts of Acts of Parliament. Thus much it was but justice towards Lord Guilford to record: and in the words of his biographer—"we take leave of the high court of Chancery (a gross cargo upon the shoulders of the Lord Keeper) having little or nothing more to say of that grand judicial province."†

Having now concluded a brief sketch of what may be termed the *official* history of the court of Chancery during the reign of Charles II., the *legislative* measures for the amendment and reform of the law may be shortly and chronologically mentioned. They were few and unimportant, but display a full knowledge of the long existing abuses and some intention of applying a legis-

* Life, p. 109.

† Ibid. p. 227.

lative remedy. The parliamentary proceedings on the subject of the equity and appellate jurisdiction of the House of Lords form a very important era in the history of the English Equity law, and is certainly part of the immediate subject of the court of Chancery; but the details would be so long that the reader must be referred to Hargrave's edition of Hale, the journals of the two houses of parliament in this reign, and numerous well known contemporary treatises in which the subject was voluminously and learnedly discussed. For the same reason also the proceedings on the legislative powers of the *Spiritual* Lords, (on both which subjects the author has large collections of works and manuscripts) must be omitted, as too discursive, and indeed not altogether relevant to the restricted object of these pages.

The parliamentary debates and histories afford no information respecting the occasional discussions on the law and judicial establishments; and a few scanty particulars only can be gleaned from the journals.

The first parliament of Charles II., in 1660, appears to have immediately taken up the subject of law reform, either with the sincere intention of prosecuting it, or to appear to do so. The following is the entry on the journals of the first session: "Resolved,—That a Committee " be appointed to consider of the regulations of the fees " of all Courts and Offices, through the kingdom, and " to receive and examine all complaints of extorted fees; " and to prepare tables of fees for such Courts and " Offices; and also to consider of the burthen on Sheriffs in passing of their accounts; and from time to " time to report to the House."* This committee consisted of eighty members, comprehending the distin-

* Commons' Journals, vol. viii p. 136. 24 August.

guished names of Hale, Pryune, Glyn and other eminent persons. They met every Tuesday afternoon, in the inner court of wards. The result of their labours does not very clearly appear. In 1661, a bill was introduced to ascertain and establish the fees of the masters in chancery, which was fully discussed and several amendments proposed.* And at the same time an order appears “That a grand Committee for regulating the Courts of Justice do sit upon Mondays; and that they take into consideration the several fees in all the Courts, Offices, and Prisons, and particularly the fees in the Exchequer upon passing Sheriffs accounts; and they are to send for persons, papers and records, from all Courts, Offices, and Prisons.”† On the 27th of June, the above mentioned chancery bill passed the house of commons—“A Bill for ascertaining and establishing the fees of the Masters of the Chancery in ordinary, being ingrossed, was this day read the third time, Resolved, That the said Bill should pass. And the question being put, whether the Title of the said Bill should be, An Act for ascertaining and establishing the fees of the Masters of the Chancery in ordinary; The same passed in the affirmative, that this should be the Title of the said Bill.”‡ This bill was agreed to by the lords, whose assent was brought by two appropriate messengers:—“A message from the Lords, by Sir Justinian Lewyn, and Sir Mundiford Brampton, two of the Masters of Chancery;—Mr. Speaker, The Lords have commanded us to tell you, that they do concur with you in two Bills you sent up to them; the one being for the confirming of public Acts; and the other

* *Commons' Journals*, vol. viii p. 276. 20 June, 1661.

† *Ibid.* ‡ *Ibid.* p. 282

“for ascertaining the fees to the Masters of Chancery.”*

The provisions of this bill are unknown. It unaccountably appears in the list of PRIVATE ACTS, entitled “An Act for ascertaining and establishing the fees of the Masters of the Chancery in Ordinary.”

A praiseworthy attempt is recorded in the journals of the house of commons, 1666, to revise and consolidate the Statute law; and it was the last instance till the recent partial though judicious labours of Mr. Peel. The following entry is extracted: “Resolved—That a committee be appointed to confer with such of the Lords, the Judges, and other persons of the long robe, who have already taken pains and made progress, in perusing the Statute Laws; and to consider of repealing such former Statute Laws as they shall find necessary to be repealed; and of expedients of reducing all Statute Laws of one nature, under such a method and head as may conduce to the more ready understanding, and better execution of such laws.”† The Solicitor General Finch, Serjeant Maynard, Prynne and many other able lawyers were members of the committee, but we have no further information or result than that they sat *de die in diem*.

Some general bills were brought in to different parliaments and sessions of this reign for reducing fees, abating litigious actions, and other wholesome judicial reforms, but no effective measures were carried.‡ A few immaterial statutes were passed for the prevention

* Comm. Journ. vol. viii. p. 292. 6 July, 1661, Lords' Journ. vol. xi. p. 300.

† Comm. Journ. vol. viii. p. 631. 5 Oct., 1666.

‡ Ibid. vol. ix. pp. 78, 289, 296, 378, &c.

of oppressive arrests and delays in suits,* for the more effectual proceeding upon distresses for rent,† and to accelerate judgment on writs of error brought in the Exchequer,‡ &c. but no general remedial measures were introduced or contemplated for the improvement of any one jurisdiction excepting that of the court of Chancery. On February 23, 1666, a grand attack appears to have been made on the long standing abuses of the equity courts, in a committee of the whole house of Commons, for the consideration of grievances. Mr. Sawyer, the chairman of the committee, reported two votes, which were read at the clerk's table; one of which, relating to the chancery, is now extracted.

“ That it is the opinion of this Committee that the extraordinary power and jurisdiction of the High Court of Chancery and other Courts of Equity, in matters determinable at the common law, is grievous to the subject.

“ That it is the opinion of the Committee, That the House be moved to appoint a Committee to bring in a Bill or Bills for redressing and regulating all extraordinary power and jurisdiction exercised by the High Court of Chancery, and other Courts of Equity in matters determinable at the common law. And he humbly moved from the said Committee, That the House would resolve again into a Committee of the whole House on Thursday Morning next, to consider of grievances at ten of the Clock. The first of the said two votes or resolves of the said Committee of the whole House being again read;

“ The Question being put—That this House doth agree with the Committee in the said vote;

“ A motion being made for an amendment therein, by

* 13 Charles II. stat. ii. c. 2—and 17 Cha. c. viii.

† 17 Cha. c. vii.

‡ 20 Cha. c. iv.

taking away the word "of," next after the word "jurisdiction," and inserting the words "exercised by" instead thereof; It was, upon the question, agreed to be amended accordingly.

"The Question being put—That this House doth agree with the Committee in the said Vote so amended;

"It was resolved in the affirmative.

"Resolved—That the extraordinary power and jurisdiction, exercised by the High Court of Chancery, and other Courts of Equity in matters determinable at the common law, is grievous to the subject. The latter of the said votes being again also read, was upon the question agreed to.

"Resolved—That this House doth agree with the said Committee of the whole House, That a Committee be appointed to bring in a Bill or Bills for redressing and regulating all extraordinary power and jurisdiction exercised by the High Court of Chancery, and other Courts of Equity, in matters determinable at the common law, And it is referred to Sir Francis Winington, Mr. Serjeant Maynard, Mr. Williams, Sir Tho. Lee, Sir Thom. Meres, Mr. Sacheverell, Col. Titus, Mr. Crowch, Mr. Mallett, Sir Edward Deering, Mr. Sawyer, Mr. Serjeant Rigby, Sir John Otway, Mr. Westfaling, Mr. Whorwood, Mr. Powle, Mr. Eyres, Sir John Mallett, Mr. Maynard, Mr. Finch, and all the Gentlemen of this House of the long robe, or any three of them, to prepare and bring in the said Bill or Bills accordingly.*

Of the proceedings of this Committee the author has been unable to discover any trace or information, but in the journals of the following year, February 7, 1667, the following entry appears—"a bill for regulating the proceedings in the high court of Chancery was read the first time—resolved, &c. that the bill be read a second time, on 'Tuesday next after ten of the clock.'"† No further

* Comm. Journ. vol. ix. p. 388

† Ibid p. 434.

mention of this bill appears. In the following year another was introduced for the regulation of the Six Clerks' office, which was read a second time and committed—but where to is likewise undiscoverable.* These few abortive attempts were all that the legislature made on this important subject! Parliaments were intermittent, and the lawyers more occupied in turning the law to account than in amending it.†

The press, notwithstanding the licensing revival, was more active than the legislature in exposing the state of the law, and suggesting plans for its improvement. Some *Chancery Poets* have been cited in these pages, from whose poetic effusions the national feeling may be gathered. The comic muse of Butler, in this and the preceding reign, was frequently employed in exposing law-craft. *Hudibras* abounds with passages of severe and caustic reflection. The folly of "going to law" in England he thus wittily jeers:—

He that with injury is griev'd,
And goes to Law, to be reliev'd,
Is sillier than a sottish chowse,
Who, when a thief has robb'd his house,
Applies himself to *cunning* men,
To help him to his goods again;
When all he can expect to gain,
Is but to squander more in vain.‡

* *Ibid.* p. 76.

† See also a few trivial propositions and reports from the Law Committee, Commons' Journals, 1664, February 7, 8, 10, 13, 16.—Nov. 24.—Dec. 14.—March 1, &c.

‡ *Hudibras*, part iii. canto iii. l. 529.

The readiness of procuring equity evidence is shewn in the following lines:—

Does not in Chanc'ry ev'ry man swear
 What makes best for him in his answer?
 Is not the winding up witnesses
 A nicking more than half the bus'ness?
 For witnesses, like watches, go
 Just as they're set, too fast or slow.
 And where in conscience they're straight-lac'd,
 Tis ten to one that side is cast.

In the humourous description of Whachum, Sidrophel's Journeyman, we have an incidental allusion to bills in chancery, with fifteen lines in each sheet, and six words in a line:—

A paultry wretch he had, half-starv'd,
 That him in place of Zany serv'd,
 Hight Whachum, bred to dash and draw,
 Not wine, but more unwholesome law;
 To make twixt words and lines huge gaps,
 Wide as meridians in maps;
 To squander paper, and spare ink,
 Or cheat men of their words, some think.*

He speaks satirically of those soft persons who—

— Fly for refuge to the hostess
 Of th' inns of court and *Chancery*, justice;
 Who might, perhaps, reduce his cause
 To the ordeal trial of the laws;
 Where none escape, but such as branded
 With red hot irons have past bare-handed. †

* Hudibras, part ii. canto iii. l. 323. † Part iii. c. i. l. 49.

The endless chicaneries and immortal duration of a suit, Hudibras celebrates in the following lines :—

For Lawyers, lest the BEAR defendant,
And plaintiff DOG, should make an end on't,
Do stay and toil with writ of error,
Reverse of judgment and demurrer,
To let them breathe awhile, and then
Cry *whoop!* and set them on again;
Until with subtle cobweb cheats,
They're caught in knotted law, like nets;
In which, when once they are entangled,
The more they stir, the more they're tangled;
For while their *purses* can dispute,
There is no end of th' *immortal suit!* *

He poetises the peculiar craft of the lawyers in never exposing their own profession to the profane touch of the reformer's hand :—

For Lawyers are too wise a nation,
T' expose *their* trade to disputation.

* Butler humorously describes his Knight applying to "Counsel in his love affairs"—who—

" — found him mounted, in his pew,
With books and money plac'd for shew,
Like nest eggs, to make clients lay,
And for his false opinion pay."

In another poem, "The Progress of Honesty, or a view of the Court and City," a similar satire appears :—

" Discord's apartment different was seen,
He had a Lawyer been;
One that, if fee were large, loudly could bawl;
But had a cough o' the' lungs, if small:
And never car'd who lost if he might win.
His shelves were cram'd with processes and writs,
Long rolls of parchment, bonds, citations, wills;
Fines, errors, executions, and *eternal chancery bills.*"

Butler's severe character and satire of Lord Shaftesbury is well known as one of the most bitter personal invectives extant.* The following lines, on the temporising secession of Lord Chancellor Nottingham from Parliament, also wittily describe the political *necessity* of lawyers submitting themselves to the court.

Ask me no more why little *Finch*
 From Parliament began to winch?
 Since such as dare to hawk at kings;
 Can easie clip a Finch's wings.†

These poetical effusions, which might be greatly multiplied, may be considered as puerile quotations, but they are useful to shew the degraded state of a dignified profession, and the popular contempt of the courts of justice, resulting from the abominable system of political corruption and patronage detailed in these pages.

Numerous contemporary works and pamphlets might be quoted to prove the deplorable state of the court of Chancery at this period, both as to arrear of business, the delay and expence of the process, and the contradictory nature of the decisions; but the reader is doubtless sufficiently satisfied of the facts.

Whitelocke, in his notes on the King's Writ, said to have been expressly composed for the illumination of Charles II., thus remarks on an eulogy, by Lord Ellesmere, of the chancery jurisdiction—"I shall not impeach this encomium, because the author was a

* Hudibras, part iii. canto 2. l. 351.—Lord Shaftesbury is equally celebrated by Dryden (in Absalom and Ahitophel) and by the author of *The Progress of Honesty*, p. 22.

† *Loyal Songs*, vol. i. p. 42.

chancellor ; nor insert my notes upon it, (though I have had too much experience of this authority :) because I then should be enforced too much to indulge my selfe. Butt I shall only propound this caution : to keep within the bounds of that description, and not to ingrosse too many particular causes in that court : least it prove a mischief to the subject, and a bane to the authority.”*

Some remarks on the Equity jurisdiction, published at this period, in Hunt’s “Argument for the Bishops’ right,”† are worth quotation, as illustrative of the opinion of men of sense and honesty on the state of the court of Chancery :—

“ There is nothing so great a reproach to a nation, than to have laws that are confessedly not good and equal, to continue them ; and yet to allow of an authority to reproach them with iniquity : that our courts of law, should be under rules and obligations to pronounce judgments, which a single gentleman shall authoritatively controul and condemn, as unrighteous : that law and equity should be opposites ; that a judgment must be made up, and formed in a case, and what is equal, just and fit therein, must not be considered, though it can be, and will, in another court, have a judicial consideration.

“ Our judges at law, take themselves bound, not to hear or regard the allegations of the defendants against the plaintiffs pretence, which ought in good reason to bar them therein ; or at least qualify the judgments, when the same matter shall be heard in Chancery, and prevail either wholly to set aside or to qualify the same judgments.

“ This is not only to be complained of as derogatory to

* Whitelock’s Notes, vol. ii. p. 390, chap. cv. Commentary on the clause “ To us in our Chancery.”

† Argument, &c. by Thomas Hunt, Esq. 8vo. London, 1682.

the reputation of the wisdom of the nation, but is insufferably oppressive to the subject, by the multiplicity of suits, tedious and vexatious delays; nay by this ill contrivance, the expences sometimes equal, sometimes exceed the value of the right, which is litigated, and which is worse, the event of the suit is very uncertain and fortuitous. But this is not all, our law it seems is not a rule that extends itself to all causes; and we have rights confessedly, such, and which can be judicially remedied, to which the common law extends no relief: for a thousand causes in a year, are for that reason heard in the court of Chancery.

“Two such reproaches, no nation but ours hath ever yet incurr’d or suffer’d: for law and equity is, no where else opposed, and every right hath his remedy by the law of the country but ours.

“The first great occasion to the rise of the Chancery was feoffments, made upon trust, to uses in the time of our warring about the title of the crown to avoid forfeitures. The judges in tenderness to the condition and necessities of those times, did judge, that an use was no right, though most certainly it is: for it is *jus ad rem* that nothing might be forfeited when it depended upon chance whether a man should be a good subject or a traitor, and the same consideration easily admitted of any authority that would interpose to relieve against those who would abuse or deny such trusts; and nobody brought into question that authority, by which a piece of justice, so necessary to the nation, was administered. Another great reason of the business of the court of Chancery, is that which we before mentioned, that we have not improved the statute of *Westm. 2 c. 24*, and the third is the ill conducting of our laws: our ancient judges were infected with the monkery of that time, men of no learning and of a vain subtilty. The theology of those times was insipid, and most trifling, and the administration of justice agreeably turned into a vain art of disputing the *apices*

juris, and a subtilty was used, too fine for business, and to govern the affairs of men that governed themselves by none of those superfineries. They argued without discourse, or discoursed from positive rules or presidents, which were almost the same with them as rules of law, and not from the true merits of the cause, and its own particular reasons of right.

“ And the common law, which is *lex non scripta*, i. e. that which a wise judicature should declare, upon the consideration of the present case, was by the proceedings of our Courts, turned into a *lex scripta*, positive and inflexible; and the rule of justice could not accommodate itself to every case, according to the exigency of right and justice.

“ But if it were considered that there can be no prescription against justice, that no presidents, where a right hath not been relieved, can be pretended why it should not be assisted hereafter: and if a matter pleaded in bar, upon which the defendant will be certainly relieved in Chancery, may, notwithstanding it hath not heretofore, be hereafter allowed in our law courts, we should be in a great measure restored to our easy, expedite, cheap and certain justice, which the methods of our common law courts hath most excellently provided, until a parliament, sometime or other, may consider whether it be not fit to take it quite down, by enabling courts of law, to do true right in all causes that shall come before them: for nothing renders the Chancery tolerable, but the most exemplary virtue and great endowments of our present Lord Chancellor, in which he is not like to have a successor.”—p. 145 to 148.

Sufficient has now been cited to show that in as much as the court of Chancery was not amended, it must necessarily have grown worse, in a ratio, to be estimated by the increase of its business and of the *cases*, or contradictory decisions.

The base character of Charles the Second is too well known and strikingly portrayed by all historians, to require any further exposition than that which the foregoing pages amply afford. "He lived with his ministers as he did with his mistresses; he used them, but he was not in love with them. He shewed his judgment in this, that he cannot properly be said ever to have had a *Favourite*, though some might look so at a distance."* Charles II. was a profligate man and a worse monarch. Thus had this country been hitherto governed, and thus were its important judicial establishments built on the single and sandy foundation of antiquity! That such consequences should have followed the vesting of all political power in ONE MAN, was not to be marvelled at; it is only a matter of surprise that knowledge should have triumphed over the mass of ignorance and misrule. The history of England, from the Conquest to the Restoration, is little more than the history of bad government, and the effects of *favouritism*. The aristocratical families and royal favourites scrambled for the enjoyment and patronage of political and ecclesiastical preferment, particularly for the desirable office of Prime Minister; and a sensible political writer has remarked, in reference to the national misfortunes caused by their jarring contentions, "that there never yet was a *prime minister* in Britain, but either broke *his own* neck, or his *master's*, or *both*, unless he saved *his own* by sacrificing his *master's*." And another author has given the following curious statistical return of the casualties of the sundry Prime Ministers who came to such untimely end:†—

* Character of Charles II. by George Saville, Marquis of Halifax.

† A short History of Prime Ministers in Great Britain, 8vo. 1733.

PRIME MINISTERS.

Died by the Halter	3
Ditto by the Axe	10
Ditto by Sturdy Beggars	3
Ditto untimely, by Private Hands	2
Ditto in Imprisonment	4
Ditto in Exile	4
Ditto Penitent	1
Saved by Sacrificing their Masters	4

Sum Total of PRIME MINISTERS, 31

No political events illustrate more remarkably the folly and inconsistency of human nature uneducated and unprincipled, than the events of this reign. As democratical enthusiasm ebbed, loyal infatuation flowed in as fast. Charles, who had been the bugbear of the nation, became at once its idol. Example led the herd of the people to follow the leaps of their leaders, and in prostrating their liberties at the royal footstool, they appeared ignorant that power is the substance of royalty, and title but the shadow. The bell-wethers of Monk's party having made their own market, left the flock to shift for themselves, and the majority of the House of Commons, instead of being representatives of the people, became *undertakers* for the crown and aristocracy.*

The following contrasted historical passages display a comparative view of popular expectations and monarchical actions :

“The King was no sooner at Whitehall than but the Speakers, and both Houses of Parliament, presented them- selves with all possible pro-	“His person and temper, his vices as well as his for- tunes, resemble the character that we have given us of Ti- berius so much, that it were
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* See Ralph's introductory review of the reigns of Charles II. and James II.

fessions of duty and obedience at his royal feet, and were even ravished with the chearful reception they had from him. The joy was universal; and whoever was not pleased at heart took the more care to appear as if he was."—*Clarendon's Life. Continuation*, p. 8.

"The 29th of May has, since 1660, been solemnized by our Church, for his birth and return: and may the prayers of his loyal subjects, for him, ascend, and be heard by the God of Heaven; who bowed the hearts of the most rebellious among us to submit to his scepter. Of this the General (Monk) was truly sensible, for when I came to him at the Cock Pit and gave him my share of thanks for this renowned restauration, he broke into tears, saying these words: *no Mr. Price, it was not I that did this; you know the jealousies that were had of me, and the oppositions against me: It was God alone who did it. To him be the glory, whose is the kingdom and the power over this and all governments!*"—Mystery and method of the Restoration, by John Price, D. D.

easy to draw the parallel between them. His hating of business, and his love of pleasures; his raising of favourites, and trusting them entirely; and his pulling them down, and hating them excessively; his art of covering deep designs, particularly of revenge, with an appearance of softness, brings them so near a likeness, that I did not wonder much to observe the resemblance of their faces and person.—*Burnet*, vol. ii. p. 469.

"To the king's coming in without conditions may be well imputed all the errors of his reign. And when the Earl of Southampton came to see what he was like to prove, he said once in great wrath to Chancellor Hyde, it was to him they owed all they either felt or feared; for if he had not possessed them in all his letters with such an opinion of the King, they would have taken care to have put it out of his power either to do himself or them any mischief, which was like to be the effect of their trusting him so entirely."—*Burnet*, vol. i. p. 152.

Two hundred and eighty-eight Public, and three hundred and thirty-eight Private Acts were added to the statutes in this reign. A chasm or interregnum in the Statute book, between the years 1640 and 1660, would suggest, that such an annual increase of written law is not vitally essential to the existence or prosperity of a nation. The statute of *Frauds*, enacted in this reign,* must, nevertheless, be recorded as a most important and salutary legislation.

The contemporary reporters were as follows, the equity volumes being distinguished by italics.

CHARLES II.—1660.

Carter (C. P.), 16 to 27	<i>Modern (K. B. C. P. Exch. and Chan.)</i> vol. 2, 26 to 30
<i>Cases in Chancery, part 1—</i> 12 to 30	<i>Modern (K. B. C. P. Exch. and Chan.)</i> , vol. 3, 34 to 37
<i>Cases in Chancery, part 2—</i> 26 to 37	<i>Nelson (Chancery)</i> , 1 to 37
Clayton (Pleas of As. York), 1 to 2	Parker (Exchequer), 30
<i>Dickens (Chancery), a few cases</i>	<i>Pollexfen (K. B. C. P. Exchq. and Chan.)</i> , 22 to 37
<i>Finch (Chancery)</i> , 25 to 32	T. Raymond (K. B. C. P. and Exch.), 12 to 35
<i>Freeman (K. B. C. P. Exch. and Chan.)</i> 22 to 37	<i>Reports in Chancery</i> , 1 to 37
Hardres (Exchequer), 7 to 21	Saunders (K. B.), 18 to 24
Tho. Jones (K. B. and C. P.), 19 to 37	<i>Select Cases in Chancery</i> , 33
Keble (K. B.), 13 to 30	Shower, (K. B.), 30 to 37
Sir J. Kelyng (Crown cases and in K. B.), 14 to 20	Siderfin (K. B. C. P. and Exch.), 9 to 22
Levinz (K. B. and C. P.), 12 to 37	Skinner, (K. B.), 33 to 37
Lutwyche (C. P.), 34 to 37	Style (K. B.), 1 to 7
<i>Modern (K. B. C. P. Exch. & Chan.)</i> , vol. 1, 2, 1 to 29	Vaughan (C. P.), 17 to 25
	<i>Ventris (K. B. C. P. Exch. and Chan.)</i> , 20 to 27
	<i>Vernon (Chancery)</i> , 32 to 37

* Stat. 29 Charles, c. 3.

CHAPTER X.

OF THE COURT OF CHANCERY,
DURING THE REIGNS OF JAMES II., WILLIAM AND MARY,
AND ANNE, A. D. 1685 TO 1714.

Our Judges have been very corrupt and lordly, taking bribes, and threatening juries and evidence, perverting the Law to the highest degree, turning the law upside down, that arbitrary power may come in upon their shoulders.—*Speech of Henry Booth, Lord Warrington.*

The King will make the Judges in Westminster Hall to murder the Common Law, as well as the King and his brother designed to murder the Parliament by itself; and to this end, the King, before he would make any Judges, would make a bargain with them —The Judges, except Lord Chief Baron Atkins, and Justice Powell, were such a pack as never before sat at Westminster!—1685. *Coke's Detection.* vol. ii. p. 353.

I was at the Temple with Mr. Rog. North and Sir Charles Porter; who were the only two honest Lawyers I have met with.—1689. *Diary of Henry Lord Clarendon.* vol. ii. p. 150.

The reigns of William and Anne exhibit to the reader one uniform scene of venality and corruption. *Dr. Routh's Preface to Burnet's own Times.* vol. i. p. xxxi. ed. 1823.

ON the accession of James II., the lawyers, whom North describes in the Examen as a "profession that commonly follows the encouragements," were among the first to pay their *addresses* to the rising sun, in language of the most fulsome and ultra-loyal adulation. Ralph has inserted that of the barristers and students of the middle Temple, headed by Sir Humphry Mackworth;

and from their commentaries in the address on the "balance of trade," the historian not unaptly styles their production as the offering of the "merchants of the law." James the Second must have made the best of his time on his accession, or the lawyers placed political capital to his credit without consideration, as they profess "a grateful sense of the great things you have done and suffered for us already; an entire confidence in your Majesty's goodness towards us for the future, and a chearful compliance with your heroic inclinations to advance the honour and interest of these nations."* These sagacious legal persons had probably enjoyed a long acquaintance with the heir presumptive, and had been courting his majesty for the "*rem in spe*." It is only necessary to remark that this address is a sample of the popular prostration and idolatry which welcomed this weak monarch to his throne: another humiliating proof of the debasing effect of long continued bad government.

Lord Guilford retained his office till his death, in 1685; as the author of the *Lives of the Chancellors* expresses it, "he kept the great seal, and his management was conformable enough to the tendency of the Court till the death of Charles II. He was not less acceptable to his brother King James II."† It is extremely difficult to weigh impartially the legal characters of these times. The author of the above work quotes a contemporary writer on the trial of Stephen Colledge—"that Sir Francis Pemberton, Sir Thomas Jones, and Justice Raymond having done the court jobs, in the

* Ralph's History, vol i. p. 847, and Fox's James ii. p. 97.

† *Lives of the Chancellors*, vol. i. p. 177.

“ trial of Fitz Harris, a new set of four was made to do this of Colledge’s; the chief of which was *Sir Francis North*, a man cut out to all intents and purposes “ for such a work, and as if born to do it.” The biography of Lord Guilford in the lives of the Chancellors closes with the following mysterious allusion; “ there was an odd story of a Chancery Suit between the Duke of N—— and Sir S—— H——, in his time, and of some good plate in a box, but it looks too invidious to relate it.”* But the moral reflection of these accusations, and their truth must be considered by reference to the customs of the times. Burnet records that in the last reign, Charles the Second during the hearing of appeals in the house of lords, personally canvassed particular lords on behalf of the appellant and respondent. Oliver Cromwell did not scruple to influence the Scottish judges when protector; and it may well be imagined that the judges themselves would not be more scrupulous with such examples.† The English, like the Bœotian judges, were *δωροφάγοι devourers of presents*. The acceptance of pecuniary oblations from the lower officers of the court was an ordinary custom, and in some degree explains the reason of all their fees and emoluments being so long and sacredly respected. Lord Guilford was much blamed for availing himself of this corrupt practise. A curious anecdote is related in his life, of a quarrel with the dependants of his court, and they with each other; and Roger North ingenuously writes, “ The six Clerks have great dependance on the court of the Chancery for their profits, and are always disposed to keep the Judge in good humour, and prevent alterations to their prejudice. And all the Judges of the Courts

* Burnet, Own Times, vol. ii. p. 84.

† See instances cited in Barrington on the Statutes. p. 24.

make no scruple to accept presents of value from the officers, by way of new years gift, or otherwise.”*

On the death of Lord Guilford, in 1685, the seals were given to the infamous and notorious lord chief justice of the King’s Bench, George Jefferies; and Burnet severely remarks that “nothing but his successor made North be remembered with regret.” “The bloody Assizes” are too familiar to every English historical reader to require any detail or evidence that this murderer, in the robes of a lord chief justice, waded through blood to the possession of the chancellorship. However much the historical party writers differ in their representations of the actions and characters of the political actors of these times, *all* agree that laws were never so audaciously trampled upon, or the common forms of justice so indecently outraged, as by this barbarian on the western circuit, who “setting out with a savage joy, as to a full harvest of death and destruction,” strewed the country with the heads and limbs of two hundred and fifty-one “traitors.” It is scarcely necessary to trace the political and judicial prostitution by which this judge elevated himself to the chancellorship. Certainly if industrious devotion to the purposes of James II. merited the seals, Jefferies truly deserved their enjoyment. His assistance on the *quo warrantos* and *state* trials of that and the preceding reign was most effective, and it was to be expected that *he* would find favour in the eyes of a Stuart, who adopted for his motto, when made King’s Sergeant, *A Deo Rex, a Rege Rex—The King from God, and the Law from the King!* In his celebrated circuit, which James denominated Jefferies’s *campaign*, he spared no

* Life of Lord Guilford, p. 283.

object of political prosecution, and his inhumanity was never suspected except in an instance where he is believed to have accepted £15,000, to save Prideaux's life. In September, 1685, he was accordingly transferred from the court of King's Bench to the Chancery, and shortly before had been elevated to a peerage. His qualifications for his important office were extremely scanty, and such only as were likely to be possessed by a man who is biographically described to have "thought of nothing more than how to climb." It would serve no present purpose to dilate on the political or judicial character of this chancellor. He was neither qualified to fill the office with advantage to the suitors, nor was his time or mind at their service. His contemporaries among the judges, and the official persons he preferred during his chancellorship, are depicted in L' Estrange's observations on former times; "the bench deserved the gallows better than the prisoners, which is no more than a common case, where iniquity takes upon itself both the name and administration of justice."* The *abdication* of both James and his Chancellor is too well known to the reader to require even any narrative of the immediate and attendant circumstances which caused and accompanied it†. On the landing of the Prince of Orange,

* "Great Rogues hang up Little Rogues." fab. cxlii.

† The recent fate of Charles I. probably scared this weak minded and pusillanimous monarch to quit his throne and country. Perhaps his cowardice may have been aggravated in the assembly of noblemen immediately preceding his flight, where addressing himself to the Earl of Bedford, father of Lord Russell, who had been beheaded by James's intrigues in the preceding reign, *My Lord*, said he, *you are an honest man, have great credit, and can do me signal service. Ah sir*, replied the earl, *I am old and feeble, I can do you but little service; but I once had a son that could have assisted you, but he is no more.* James is reported to have been speechless for some minutes.

and the flight of the King, Jefferies, conscious of his deserts, left his house with the intention of flying the country, and the great seal was thrown into the Thames, whence it was recovered by a fisherman. His subsequent lodgment in the tower, (in his way to which he was with difficulty preserved from an infuriated people crying out *Vengeance, Justice, Justice,*) is well known, and his premature death, before he was brought to that condign punishment he so richly merited, and would doubtless have experienced.

Thus closed the reign of James II. the last king of the house of STUART, a dynasty more inimical to the liberties of the People of England than any FAMILY who had established the rule of the few over the many. The lessons of experience were despised by the last monarch of their race; and as the intelligence of the people progressed, the bigotry and despotism of the Stuarts increased in a geometrical ratio, and at length became extinguished by its own excesses.

This portion of the history of the court of Chancery exhibits a judicial ignorance, corruption, and a bigoted opposition to legal improvements, perhaps unparalleled in the history of any country. Such was the origin and early administration of the courts of Equity, built upon no principles or system, but on the contrary constructed of the most heterogeneous and base materials.

The parliamentary journals and debates reveal no projects of law reform during this inactive and inglorious reign. Several orders in Chancery by Lord Jefferies, will be found in Beames's collection, all of them displaying numerous prevalent abuses, but none containing any effective remedies.

As parliaments were inconvenient assemblies to James, very little addition was made to the statutes:—twenty-

two public and eight private acts were added to their former bulk.

The contemporary reporters were as follows :—

JAMES II.—1685.

Carthew (K. B.), 2 to 4	Lutwyche (C. P.), 1 to 4
<i>Cases in Chancery, part 2</i> —1	<i>Modern (K. B. C. P. Exch.</i>
to 3	<i>and Chan.), vol. 3, 1, to 4</i>
Cases of Settlement (K. B.),	Parker (Exchequer), 3 to 4
2 to 4	<i>Reports in Chancery, 1 to 3</i>
Comberbach (K. B.), 1 to 4	Shower, (K. B.), 1 to 4
<i>Freeman (K. B. C. P. Exch.</i>	Skinner, (K. B.) 1 to 4
<i>and Chan.) 1 to 4</i>	<i>Ventris (K. B. C. P. Exch.</i>
Levinz (K. B. and C. P.), 1	<i>and Chan.), 1 to 4</i>
to 2	<i>Vernon (Chancery), 1 to 4</i>

THE REVOLUTION.—WILLIAM III.

A. D. 1688 to 1701.

High-sounding words and promises have a witching influence on a nation, and the “glorious revolution” is still the popular theme of idolatry, and considered as the origin of all our subsequent national improvements and greatness. The *fact* is that the Prince of Orange was called to the throne without any *real* restrictions being imposed. It is true, that a “*Declaration of Rights*” was read over to him, with all the imposing solemnity of the occasion, and that the Prince made an “*answer thereto*.” But no securities were taken for its observance, no punishment defined for its breach. Indeed little was to be expected from Lords and Commons who at such a crisis and under such impressive circumstances, wasted their time in long debates as to the adoption of the phrase “abdication” or “the vacancy of the throne;” and still less could be expected of a prince who had

enjoyed military and despotic power in a neighbouring country. The new king *declared* that a standing army was unconstitutional, that elections of members of parliament ought to be free, that fiscal extortion should not be practised, and that no *special* juries should mock the trial of men charged with political offences. But, no security being taken, standing armies, corrupt parliaments, and anticipated resources, termed "a national debt," have been matured in rapid and gigantic growth. The *mode* of government only was essentially changed. The example and fate of the Stuarts plainly taught the hopelessness of endeavouring to govern *without* parliaments, and their successors therefore bent all their political genius to the discovery of a mode of ruling *by* them. Finding it impossible to abolish the trust, our subsequent monarchs applied themselves to governing the trustees, and to influence them to royal objects by bribing them to seek their own private profit under the cover of performing the public service. Parliaments therefore were not suppressed, but *managed*: the *Borough* system, and distribution of patronage to the aristocracy, became the tools of the English government; and it was early and truly said, that all we gained by the *Revolution*, was a precedent in favour of *resistance*; of which, however, good care was taken that we should not again be permitted to have the benefit. It may be easily anticipated how this new system would act on our judicial establishments, and that comparatively few legal reforms or amendments would be effected during the prevalence of a corrupt form of government, which tended to annihilate all public spirit, to overrun the country with selfishness and venality, and to cause wealth, power, and rank to be sought after upon any terms. The national advancement since 1688, has originated in the

progress of knowledge, and the corresponding influence of Public Opinion, but has not resulted from any miraculous effects of the *Revolution*; since, had James II. and his descendants kept possession of the throne of England, they must, and would in self-defence, have adopted a more secure and cautious line of policy, ruling by *Parliaments*, and thus, through different means, accomplishing the same ends.

The lawyers, as usual, took an active part in destroying the old government and making the new one, and whoever carefully studies the parliamentary debates of the interregnum and first parliament of William III., will see that their sacrifice to *forms*, and their professional narrowness of mind, prevented the liberties of the country from being built on a broad and lasting foundation.* Their courtship of the new monarch soon commenced. Burnet narrates the well known anecdote that "Old Serjeant Maynard came with the men of the law. He was then ninety, and yet he said the liveliest thing that was heard on that occasion. The Prince took notice of his great age, and said that he had outlived all the men of the law of his time. He answered, 'He had like to have outlived the law itself, if his Highness had not come over.' "† It was an ill omen for the suitors of the court of Chancery, that this common law

* There were characters in those days who, had they been supported, would have secured the constitutional liberties of the people. Lord Warington joined the Prince of Orange immediately on his landing; and raising a military force declared on his first appearance in arms: "I am of opinion, that when the nation is delivered, it must be by *force*, or miracle; it would be a great presumption to expect the latter; and therefore our deliverance must be by force; and I hope *this* is the time for it."

† Burnet, *Own Times*, vol. iii. p. 341. In the new edition a note of Swift's is given, who had margined this anecdote of Maynard—"He was an old rogue for all that."

serjeant (however justly celebrated for learning and consistency), at the age of *ninety* was appointed their judge! How far this nomination resulted from the above judicious and “lively” compliment, the reader must judge for himself.

In detailing the political arrangements of William's first administration, and the difficulty of selecting a second secretary of state in addition to Lord Shrewsbury, Burnet reveals a singular fact respecting the Chancery: “It was for some time under consideration who should be the other secretary; at last the earl of Nottingham was pitched on. Not to provoke so great a body (as the high churchmen) too much, it was thought advisable to employ the earl of Nottingham. *The great increase of Chancery business had made many apprehend it was too much to be trusted to one person*, so it was resolved to put the Chancery in commission: and the earl of Nottingham was proposed to be the first in the commission, but he refused it. So Maynard, Keck, and Rawlinson, three eminent lawyers, were made the three commissioners of the great seal.”*

In this year an act passed “for enabling Lords Commissioners for the Great Seal to execute the office of Lord Chancellor or Lord Keeper,”† a principal object of which doubtless was to obviate the inconveniences of this great load pressing on one individual. The act simply enables the commissioners to execute the power of Chancellor as its title imports. The bill originated in the house of lords,‡ and was much dis-

* Burnet, vol. iv. p. 4.

† Stat. 1. William and Mary, c. xxi.

‡ Lords' Journals, vol. xiv.—Comm. Journ. vol. x. See Index, *Great Seal*, 1 Parl 1 Sess.

On the re commitment of the Bill in the Lords, March 25th, 1689, it was amended to prevent the sale of the places of Clerks of the peace:—

cussed in the commons, the two houses having held several conferences on its principle and different clauses. It certainly was a most important innovation, and its principles of co-equal, or even distinct jurisdiction, might perhaps be beneficially extended. These commissioners were not long in office, but were superseded in June 1690, by a new commission to Sir John Trevor, Sir William Rawlinson, and Sir George Hutchins. The character of the first commissioner, as drawn by Burnet, is not very propitious for the interests of the chancery. "The Speaker of the House of commons, " sir John Trevor, was a bold and dexterous man; and " knew the most effectual ways of recommending himself to every government: he had been in great favour " in king James's time, and was made master of the " rolls by him; and if lord Jefferies had stuck at any " thing, he was looked on as the man, likeliest to have " had the great seal: he now got himself to be chosen " speaker, and was made first commissioner of the great " seal: being a tory in principle, he undertook to manage " that party, provided he was furnished with such sums " of money as might purchase some votes; and by him " began the practice of buying off men, in which hitherto " the king had kept to stricter rules. I took the liberty " once to complain to the king of this method; he said " he hated it as much as any man could do; but he saw, " it was not possible, considering the corruption of the " age, to avoid it, unless he would endanger the whole."*

" And it is further ordered, that it be, and is hereby recommended to the said Lords' Committees, to draw a Bill to regulate and prevent the selling of any places whatsoever, in the Chancery or elsewhere."—*Journals*, vol. xiv. p. 151.

* Burnet, *Own Times*, vol. iv. p. 74.

This is an important passage, and reveals a system of pecuniary bribery, alike unprecedented as profligate.* When Trevor thus bought others, it was to be expected that he would feel no compunction in selling himself. Accordingly, in 1695, having too incautiously received a bribe of 1000 guineas from the orphans' fund, he was accused of corruption, and ultimately abdicated, or was expelled his situation of speaker, and excluded from the house of commons.† Although it is certain that a considerable majority of the members of the house who pressed Trevor's expulsion were equally corrupt, yet *detection* had not overtaken them, and rendered it necessary that a decent example, under such

* "One accident happened this summer, of a pretty extraordinary nature, that deserves to be remembered. A fisherman between Lambeth and Vauxhall, was drawing a net pretty close to the channel; and a weight was, not without some difficulty, drawn to the shore, which, when taken up, was found to be the great seal of England. King James had called for it from Lord Jefferies, the night before he went away, as *intending to make a secret use of it, for pardons or grants*. But it seems, when he went away he thought either that the bulk or weight of it made it inconvenient to be carried off, or it was to be hereafter of no more use to him: and therefore that it might not be made against him, he threw it into the Thames. The fisherman was well rewarded, when he brought the great seal to the king: and by his order it was broke."—*Burnet, Own Times*, vol. iv. p. 30.

† Ralph, vol. ii. p. 647.—Cobbett's Parl. Debates, vol. v. p. 886.—Comm. Journ. vol. xi.

When summoned to attend the Commons on this infamous charge, Trevor's conscience appears to have consumed his courage. He addressed a letter to the clerk of the house excusing his attendance on that evening (March 13, 1694), stating—"after I was up I was taken suddenly ill with a violent colick. I hope to be in a condition of attending you to-morrow morning." The following day he writes, "my illness still continues, which makes me unable to come abroad." It is needless to say that his complaint was a *political* one, from which he never recovered.—*Journals*, p. 272.

public notoriety, should be made of the unlucky criminal.

The journals of the house of lords about this period, exhibit a more zealous desire of advancing judicial reforms than the proceedings of the commons. In 1689, their committee of privileges appear to have enquired into the increase and causes of the delays and growing expences of the courts of justice, and to have reported the following suggestions of remedy, extracted from the Journals, April 30, 1689.

In 1689 a Committee of privileges of the House of Lords appear to have examined into the Civil Jurisdiction of Parliament, the subject of Private Petitions, and delays of the Courts of Justice. Lord Huntingdon presented the Report on the 1st of May, (see Journals, ann.) The Report stated that they had advised with Mr. Petyt, who had delivered to them a paper, which was read as follows :—

“ As concerning the statute of the 14 Edward III., whereby it is ordained, That delay of Judgments in other Courts, should be redressed in Parliaments.

“ The Statute recites, That divers mischiefs had happened, for that in the Chancery, King’s Bench, Common Pleas, and Exchequer, &c. Judgments had been delayed, sometimes for difficulty, and sometimes for divers opinions of the Judges, and sometimes for other Causes; for which reasons it was enacted, That at every Parliament there should be chosen a Prelate, 2 Earls, and 2 Barons, who were to be commissioned to hear, by Petition, such complaints of such delays and grievances, and to cause to come before them the Judges, and the tenor of the Records and processes of Judgments so delayed; and by advice of the Chancellor and the Treasurer, and the Justices of both Benches, and as many of the King’s Counsel as they should think fit, to direct what judgment the Court should give.

“ And in case it should seem to them, that the difficulties be so great, that they may not well be determined without assent of the Parliament, that the said tenor or tenors should be brought by the said Prelate, Earls and Barons into the next Parliament; and there a final accord should be taken, what Judgments ought to be given in the case.

“ I cannot now tell how well the statute was executed in every Parliament in the long reign of Edward III.; but, no doubt, many examples may be found in the execution thereof among the records in the Tower.

“ And this is certain, that in 9th. Richard 2nd. there was a Commission granted, wherein this statute of the 14th. of King Edward 3rd is recited at large. The Commission was made to 13 Commissioners, *de audiendo Querelam Thomæ Lovel, de assensu Parliamenti*; commanding the Chancellor, the Treasurer, the Justices, and others of the King’s Counsel, to attend and assist the said Commissioners.

“ So that I conceive the Statute 14th Edward III. is still in force; but there are two things, which will be necessary to put it in execution.

“ The first is, that such Prelate, Earls, and Barons must be nominated by assent of Parliament.

“ The second is, That there must be a Commission under the Great Seal, granted by the King to them.

WM. PETYT.*

Various other legal debates and measures of the upper house will be subsequently noticed.

An order in chancery, of the date 9 December, 1693, under the signature of Trevor,† discloses a great schism and dispute existing between the sworn clerks and their under clerks, who in a petition to the Master of the Rolls were stated to behave to their superiors “after a bold, insolent, rude, and disorderly manner, in the six clerks’

* Lords’ Journ. vol. xiv. p. 197.

† Beames, p. 295.

office;" using " unmannerly and abusive language, breaking of windows, cutting desks, breaking down seats, &c." causing the records to be taken away from the office and " to be copied at under rates." Which of these alledged offences most excited the anger of the superiors it is no difficult matter to guess, but although of itself scarcely worthy any investigation, yet as connected with some singular, official, and legislative proceedings not generally known, the following particulars are important and highly illustrative of this peculiar court and its establishment.

In 1691—2, a bill was introduced into the house of lords for the general reform of the Chancery courts, and for regulating the six Clerks' office, which occasioned a singular and voluminous printed controversy or civil war, between the sworn clerks and the six clerks, and in which the under clerks contended that they could do the business of the office much cheaper and more expeditiously without their superiors. No draft of the bill is extant, but from the above dispute it appears to have complained of 1. disorders; 2. delays; 3. unnecessary expences. The *cause* assigned is the want of a competent number of experienced attorneys to dispatch the accumulation of business. The remedy provided by the bill was, 1. The increase of the number of attorneys proportionate to the business, with strict qualifications consistent with the ancient statutes.* 2. The abatement of fees, in reducing the cost of copies from eight-pence to four-pence a folio. 3. in taking away the engrossed bill annexed to commissions, the expence of which had been six-pence per folio. The bill recited " That whereas in a long tract of time there have been

* 12 Rich. II.—12, 14, and 15, Henry VIII.

“ found many inconveniences in the proceedings of the
 “ Court of Chancery, and the Courts of Equity, very
 “ fit and necessary to be redressed and regulated by
 “ authority of Parliament; for the good of all the sub-
 “ jects of England when there shall be a fitting time,
 “ duly to weigh and consider the same. And whereas
 “ among other great inconveniences in the said proceed-
 “ ings, it doth manifestly appear, that the practice of the
 “ Courts of Equity upon Bills of Review is one of the
 “ greatest inconveniences, &c.* It was maturely con-
 sidered, and deliberately debated in several committees
 of the Lords: the Commissioners of the great seal,
 and several of the judges were examined and consulted
 on its provisions. On December 14, it passed the upper
 house, and was sent to the house of commons. A most
 violent opposition was then commenced, and the con-
 sideration of it was delayed and postponed on the most
 frivolous pretences. Orders for reading it were succes-
 sively made on January 15, February 2 and 8,† and the
 Lords repeatedly sent messages to the commons re-
 minding them of the bill before them.‡ At length on
 February 12th it was read the first time, but no record
 exists of any discussion on its merits. On the 13th,
 after the lords had again reminded them of the bill, it
 was ordered to be read a second time on the following
 Tuesday.¶ After the 22nd February, the lords appear
 to have considered any further memento useless, and no
 trace can be found of a bill which was doubtless very
 remedial of the abuses of the court, because it met with

* Lords' Journals, vol. xiv. 1691, 13, 16, 19, 21, Nov. 14 Dec.

† Comm. Journ. vol. x. 1691.

‡ Lords' Journ. vol. xiv. 1691, 15 Jan. 13 and 22 Feb.

¶ Comm. Journ. vol. x. p. 662—6.

so violent and fatal an opposition. The numerous observations by the clerks of the different offices, printed in folio, were probably privately distributed during the progress of the bill and not published, as they are rarely to be met with, and have generally no titles. A collection of them may be found in a folio volume among Mr. Hargrave's books, in the British Museum library.*

The following is a list, but their further detail is unnecessary :—

1. "Reasons Humbly offered to the Honourable the Commons of England in Parliament assembled, for their speedy endeavour to regulate the Proceedings of the Court of Chancery, with a proposal how it may be legally done without an Act of Parliament." fol. pp. 2.

2. "The Case of the Six Clerks in the High Court of Chancery, in relation to a clause in a late Act of Parliament, intituled, An Act for the Amendment of the Law, &c." fol. p. 1.

3. "Reasons for the Bill for regulating the six Clerks' Office in Chancery, with an answer to the six Clerks." fol. p. 1.

4. "The Answer of the Sworn Clerks in Chancery to the Six Clerks' Case." fol. p. 1.

5. "The Six Clerks' Reply to the Under Clerks' Answer."

6. "A Modest Computation of the loss which the Under Clerks in Chancery may sustain by the taking away of the *Dedimus Bill*, and of the advantages they claim by nature of the Recompensing Clause in the Act for the amendment of the Law, and the better advancement of Justice." fol. p. 1.

* See Catalogue, art. *Chancery*.

The following quaint observation, in the folio sheet entitled "Reasons," &c. sufficiently explains the miscarriage of this bill, and prophetically foretels that little correction of the evils complained of, was to be expected in future.—"Notwithstanding several messages from the Lords to put the House of Commons in mind of that Bill, and notwithstanding several motions in the House of Commons for a second reading, and several appointments for a second reading thereof, yet something else was still preferred before it, and some eminent in the Chancery cried out, If that Bill passed it would ruin that Court, by reason whereof that Bill never had a second reading, nor hath any thing to that purpose been done, ever since, and the reason is evident."—p. 2.

In 1693, Somers, whose early reputation and political services in the cause of English liberty are indisputable, was created lord keeper, and chancellor in March, 1697. Burnet bestows upon him the highest character for judicial ability and rectitude,* and in his encomium on the new keeper, he mentions, that "all people were now grown weary of the great seal's being in commission; it made the proceedings in Chancery to be both dilatory and more expensive: and there were such exceptions made to the decrees of the commissioners, that appeals were brought against most of them, and generally they were reversed."†

The meagre and contemptible life of Lord Somers by Cooksey,‡ communicates no information on his judicial conduct and character. His equity decrees and official

* Burnet, *Own Times*, vol. iv. p. 187. † *Ibid.* p. 187.

‡ *Essay on the Life and Character of John Lord Somers*, by R. Cooksey, Esq. of the Middle Temple, 4to. 1791.

aptitude have been soberly questioned; but his industry, and the principles of his decisions, appear on the whole to have been superior to those of any of his predecessors. A political intrigue in 1700 deprived him of his office, and further disgraced him by an impeachment, which, though failing to convict, certainly very much tarnished his character as a man and a judge. It is not worth while entering on the political details of the proceedings against him, the particulars of which may be consulted in the historical works and political documents of the period.* He was charged with corruption in his office, and with illegal and extra judicial reversal of the decrees of the court of exchequer: the charges and refutation communicate some information on the state of the courts of law, but the degree of guilt or innocence of Lord Somers is a subject of wide investigation and considerable doubt. His *public* preferment however unquestionably operated ill on his *private* integrity. *John Somers* and *Lord Somers* were different characters, and Lord Somers as Chancellor was not so active in the reform of the law as we shall soon find him in the character of *Ex-Chancellor*. His complicated and seducing employments as a minister, a courtier, speaker of the upper house, and communicant with foreign ministers, were grossly inconsistent with his office of judge of the court of Chancery.

The observations of Ralph are very applicable to the present times; and well worth extracting—"but when "justice has made these acknowledgments, she will think "herself obliged to add, that these surpassing talents,

* See Burnet's Own Times, vol. iv. p. 433.—Lords' Journ. vol. xvii. 170. Comm. Journ. vol. xiii. 1701. Cobbett's Parl. Hist. vol. v. Articles of Impeachment, p. 1266.

“ this all comprehensive knowledge, did not operate with
 “ the same vigour in the cabinet as on the bench ; that
 “ firmness which had withstood the storm, melted in the
 “ sunshine ; and, having once suggested what was right,
 “ he did not think himself obliged to withstand what was
 “ wrong ; at least, in such points as the King had set
 “ his heart upon ; though they were often such as were
 “ scarce to be reconciled either to his majesty’s printed
 “ possessions, or to the constitution, the interest, and
 “ the honor of *England* : In such cases the courtier was
 “ too hard for the patriot ; and he who had pleaded so
 “ strongly for the right of resistance, acted as if resig-
 “ nation and compliance were indispensable duties.”*

During the Chancellorship of Lord Somers, in 1695, Sir Robert Atkyns, a judge of well known learning and rare integrity, published “An Enquiry into the Jurisdiction of the Chancery in causes of Equity,” being an historical treatise on the origin of the jurisdiction, and an argument against its exorbitant encroachments. The opinions and writings of this justly celebrated lawyer are entitled to peculiar respect and influence, not merely for their unimpeached honesty, but for his experience in his office, as chief baron of the Exchequer, and speaker of the house of Lords, which latter office he filled three years. To this publication was annexed a printed *Case* upon a private appeal of his own, against a decree made by Lord Somers, in Trinity Term, 1694, on a question of mortgage, and

* Ralph’s History, vol. ii. p. 785.—Somers’s Answer to the Articles of Impeachment, *ibid.* p. 957.—See also Walpole’s Royal and Noble Authors. Swift’s Character of Lord Somers, History of Queen Anne. Addison in the Freeholder, 14 May, 1716. Maddock’s Life and Writings of Lord Somers, 1812.

a widow's separate maintenance.* The detail of facts in this cause is not material, but the general reasoning of Sir Robert Atkyns is very forcible. He commences by briefly shewing the early and determined opposition to the jurisdiction of the Chancery, which proves "how early the proceeding in equity was decry'd and exclaimed against, not only for the abuses in the administration of it, but for usurping a jurisdiction, not only not founded upon any good authority, and carried on by the potency and greatness of the Chancellor. Nor was there any the least pretence of any prescription or act of Parliament, to support it: nor was it taken to be any part of the law, or of the common law, tho' taken in the largest sence; but rather *contra-distinct*, and indeed opposite to it and destructive of it." Sir Robert then argues against its invasion of

* These tracts, in folio, are extremely scarce, and were, probably, only privately printed. The Treatise and the Case are sometimes annexed, and copies of the latter are found without the former. The author possesses the Case but never met with the Treatise, except in Mr. Hargrave's books, British Museum Library, probably the copy alluded to and used by him in his edition of Hale; see preface, cxc. The following is the Title—

"An Enquiry into the Jurisdiction of the Chancery in Causes of Equity.

I. Upon what ground and foundation that Jurisdiction is built.

II. At what time the Chancery began to exercise that Jurisdiction, and upon what occasion.

III. How modest and moderate the exercise of it was at first.

IV. How wonderfully it is grown and enlarged; And

V. What is the best remedy for restoring and maintaining the Common Law.

Humbly submitted to the consideration of the House of Lords, to whom it belongeth to keep the inferior Courts within their bounds.

By Sir Robert Atkyns, Knight of the Honourable Order of the Bath.

To which is added the Case of the said Sir Robert Atkyns, upon his appeal against a Decree obtained by Mrs. Elizabeth Took and others, Plaintiffs in Chancery, about a separate maintenance of £200. per annum.

London, printed in the year 1695."

the common law. He argues against the exposure of the subject to the varying judgment of one man: "the Chancellor's judgment is not always guided by certain and known rules, so that no foresight can fence and provide against it; we are not forewarned, and therefore cannot be forearmed." He reasons against the injurious usurpation and inutility of the Chancery in all questions of litigation where matters of fact are to be determined. He particularly points out the expence and delays of foreclosing mortgages, and asserts that "many good proposals have been made by a Bill lately depending in Parliament, and upon other occasions, from others that have been well wishers to the nation, that might have cured these mischiefs, but mightily opposed; for this is one of their *Diana's*, by which not only a Livelihood but many a large Estate is gotten."* After a detailed exposition of the evils of the jurisdiction, he revived Coke's proposed remedy of giving the courts of Common law a controuling power over the court of Chancery by writ of *prohibition* in lieu of subjecting the common law suitors to the equity writ of *injunction*. His proposition is as follows:— "All these mischiefs might be remedied, either by some good act of parliament to be passed, as has been often endeavoured; or by referring the determination and judging of Bills of Review of their decrees into good and indifferent hands; or by the Supreme Courts† declaring, that the Courts of the Common Law in Westminster Hall, ought *ex debito justice* to grant prohibitions to any Court whatsoever, that either usurp a Jurisdiction where they have none of Right,

* Enquiry, p. 39.

† By the context Parliament is here meant.

“ or exceed their Jurisdiction where they have one.
 “ This Legal Remedy having been long disused and laid
 “ asleep wants a revival. In order to obtain these
 “ peaceable and most needed helps, this small treatise is
 “ humbly recommended to the grave consideration of
 “ the House of Peers.” p. 48.

In 1699 he published a sort of continuation of the above work, entitled “ The true and antient Jurisdiction of the House of Peers,” in which he opposes the appellate jurisdiction of the house of Lords, complaining also of his own individual experience of injustice in the case alluded to. This latter treatise he inscribes to the house of Commons in a prefatory petition. The rarity of the tract and the earnest and important matter of the petition will justify the quotation of it at length.

“ To the Right Honourable the Knights, Citizens, and Burgesses of the House of Commons in Parliament assembled—

The humble Petition of Sir Robert Atkyns, Knight of the Bath—

Sheweth,

That your petitioner, in the several Public employments he has undergone, hath had more than ordinary occasion of observing the increasing jurisdiction of the Courts of Equity in this kingdom; and how the Common Law, the birth right of every Englishman, hath been, and still is, every day more and more invaded by it. He hath taken the pains to collect many of those continual complaints from time to time made by the Commons of England in Parliament, against the exercise of that new Jurisdiction in the very beginning of it. And your Petitioner hath great reason also to take notice of the exercise of the jurisdiction of Appeals from the proceedings of those Courts; and humbly presents this honourable House with what he hath collected in order to

your service therein. Your Petitioner craves leave to make use of that freedom which belongs to every Englishman to tender you a complaint against so publick and spreading a grievance. He doth not appeal, nor complain of anything which merely concerns himself. He only subjoins a case, wherein himself was a party, merely as an instance of the large exercise of a power, against the known and fundamental rules of the Common-law as he conceives. That case of your Petitioner happened very lately in the Chancery. But it is generally known in the Courts of Westminster Hall, that as your Petitioner had occasion, he hath for many years frequently and publickly in his station, inveighed against the encroachments of Courts of Equity, and that late course of Appeals. On behalf of the whole kingdom he humbly offers his service, and lays before you what he hath observed and collected upon this subject, after near three-score years experience. And submits all to your wisdom, to proceed in providing just remedies. And your Petitioner shall ever pray, &c.

ROBERT ATKYNS.*

In the conclusion of his case this learned judge defends himself from any imputation or influence of self-interestedness, by appealing to the fact of "it being generally known, that long before this present occasion, even while he himself sate in a court of equity, (established by act of parliament) he both in that court, and in the highest court, (the house of lords,) discharged his conscience, by inveighing against the encroachments of courts of equity." p. 12.

On the dismissal of Lord Somers a temporary Commission was granted to three judges, Holt, Treby, and

* The petition is also given by Hargrave in Hale, pref. p. cxc.—See also on this case, *Lords' Journals*, vol. xv. 9, 18, and 27 Jan. and 1, 11, 13, 15, 16, and 24 Feb. 1691—2.

Ward, to preside in the court; "and after a few days, the seals were given to Sir Nathan Wright, in whom there was nothing equal to the post, much less to him who had lately filled it."* As this lord keeper preserved the seals in the following reign, it is only to be observed that his judicial character in the early exercise of them exactly corresponded with this character.

The legislature was not altogether idle, as the foregoing detail of the proceedings of the house of lords attests; and the house of commons amused themselves and the country with some abortive attempts at judicial reform. By the journals of the commons, 5 December, 1695, leave was given to bring in a bill "to regulate proceedings in Equity," which was referred to a committee. On the 15th January it was presented, and on the 17th it was read a first time: orders for the second reading were renewed for the 6th, 14th and 18th March: on the 20th it was read a second time, and committed to several eminent persons, and (unfortunately) "to all that are of the long robe." On the 24th and 31st, and 9th April, additional members were added to the committee; but the session terminated without any further step.† In the following session, on 2nd February, 1696, another (probably the same) bill was presented "to regulate the court of Chancery, and other courts of equity." On the 11th and 13th it was read, and successively ordered to be read a third time on the 2nd, 13th and 19th; but again some fatal impediment opposed its further progress.‡ A few insignificant motions for returns

* Burnet, Own Times, vol. iv. p. 435.

† Comm. Journ. vol. xi. p. 354, 391, 395, 494, 525, 529, 553.

‡ Ibid. p. 686—748.

of the fees of officers of the courts of justice form the sum total of the legislative measures for the amendment of the law.

Although the government of William III. was venal and corrupt, yet it must not be forgotten that some important constitutional concessions were obtained, and several valuable legal improvements of a minor nature enacted.* The liberties of the country were certainly ill protected, but the theory of the constitution was improved and more fully recognised. The dispensing power was altogether abolished: standing parliaments were prevented, though the mode of limiting their duration has been subsequently made the artful means of their unconstitutional extension to seven years: the protestant dissenters undoubtedly obtained more religious liberty than they had previously enjoyed: the freedom of the press was more fully acknowledged and respected, justice more impartially administered, and the judges enjoyed their commissions *quam diu bene se gesserint*, instead of *durante bene placito*.† Indeed it would have been remarkable if the above improvements had not taken place, when the public mind had been so excited and informed in the time of the commonwealth respecting the necessity and the practicability of legal reforms especially. It may however be reasonably doubted how far these partial benefits were of real advantage to the country, since the same system which introduced them appeared to make them the means of resisting all future reforms, and of sinking deep the foundation of those

* Statutes, 3 and 4, W. and M. c. 14.—4 and 5, W. and M. cap. 16, 18, 20, 21, 22.—5 and 6. W. and M. c. 12.—7 and 8 W. c. 32.—8 and 9 W. c. 9. 10 and 11 W. III. c. 16.

† Stat. 13 William III. c. 2.

corrupt practices the chief object of which has been the promotion of the sinister interests of the actors.

In this reign first commenced that profuse legislation which piled statute on statute, and made the written law of England a confused mass of contradictory and occult enactments. Three hundred and forty-three Public and four hundred and sixty-six Private acts were heaped on the nation !

The contemporary reporters were as follows :—

WILLIAM III.—1689.

Carthew (K. B.), 1 to 12	<i>Modern (K. B. C. P. Exch. and Chan.), vol. 5, 5 to 11</i>
Cases concerning Settlements (K. B.), 1 to 14	<i>Modern (K. B. C. P. Exch. and Chan.), vol. 12, 2 to 14</i>
Colles (Parliamentary Cases), 9 to 14	Parker (Exchequer), 4 to 13
Comberbach (K. B.), 1 to 10	<i>Precedents in Chancery, 1 to 4</i>
Comyns (K. B. C. P. Exchequer, Chancery, and before the Delegates), 7 to 14	Lord Raymond, (K. B. and C. P.) 4 to 14
Fortescue (K. B. C. P. Exch. and Chan.), 7 to 14	<i>Reports in Chancery, vol. 2, 5</i>
Freeman (K. B. C. P. Exch. and Chan.) 1 to 14	<i>Reports temp. Holt (K. B. C. P. Exchequer and Chan. cery), 1 to 14</i>
Sir J. Kelyng (Crown cases and in K. B.), 8 to 13	<i>Salkeld (K. B. C. P. Exch. and Chan.), 1 to 14</i>
Levinz (K. B. and C. P.), 1 to 8	<i>Select Cases in Chancery, 5, 9</i>
Lutwyche (C. P.), 1 to 14	Shower, (K. B.), 1 to 6
<i>Modern (K. B. C. P. Exch. and Chan.), vol. 3, 1 to 2</i>	Skinner, (K. B.) 1 to 9
<i>Modern (K. B. C. P. Exch. and Chan.) vol. 4, 3 to 7</i>	<i>Ventris (K. B. C. P. Exch. and Chan.), 1 to 2</i>
	<i>Vernon (Chancery), 1 to 14</i>
	<i>Peere Williams (Chan. and K. B.), 7 to 14</i>

ANNE.

A. D. 1702 to 1714.

On the death of William, the Princess Anne, the second daughter of James by his first wife, and granddaughter of Edward Lord Clarendon, succeeded to the throne. Sir Nathan Wright continued lord-keeper till the change of ministry in 1705, and the whig administration of Lord Godolphin, when the first act of the court was to dismiss him. Burnet says "Wright had fallen under a high degree of contempt with all sides; even the tories, though he was wholly theirs, despising him: he was sordidly covetous, and did not at all live suitably to that high post: he became extremely rich, yet I never heard him charged with bribery in his court, but there was a foul rumour, with relation to the livings of the crown, that were given by the great seal, as if they were set to sale, by the officers under him."* Subsequent information however has transpired which proves the corrupt character of this imbecile equity judge, and accounts for the mass of property he accumulated. In the recently published notes of Onslow on Burnet, the former asserts that Wright did not restrict himself to the sale of the church livings—"It was not confined to them. It has been said he had one thousand pounds of Baron Bury for making him a judge, as appeared by Bury's book of accounts after his death. Wright had allowances out of the profits of all his officers, and alluding to which, when an officer under his successor had been guilty of some neglect of duty, and his Lord in reprimanding him said 'thou

* Burnet, *Own Times*, vol. v. p. 219.

“ ‘ art a most unaccountable fellow,’ answered, ‘ I may
 “ ‘ thank your good Lordship for that; it is yourself has
 “ ‘ made me so.’ ”*

In October, 1705, William Cowper was created lord-keeper, raised to the peerage and made the first lord chancellor of *Great Britain* in 1707. Burnet writes “ he was a gentleman of good family, of excellent parts, and of an engaging deportment, very eminent in his profession; and who had for many years been considered as the man who spoke the best of any in the house of commons.”† A note on Burnet by Lord Dartmouth discloses the disgusting motives of party spirit and intrigue which regulated the selection and appointments of the judicial officers. Lord Dartmouth says—“ the day after Cowper had the seal, I met Lord Godolphin at St. James’s; “ where in discourse, I told him, that the world was in “ high expectations from the new keeper, he said he had “ the advantage to succeed a man that nobody esteemed; “ but the world would soon have other sentiments, for “ his chief perfection lay in being a good party man; “ and seemed desirous I should understand, that it had “ not been done with his approbation: which I did not “ doubt, knowing it was part of his penance for having “ passed the Scotch act of security, and that there were “ things of a harder digestion to follow.”‡

The Dutchess of Marlborough, in her curious memoirs of female intrigue, takes to herself the credit of the change of chancellors. “ And the next year I prevailed with her majesty to take the great seal from Sir “ Nathan Wright, a man despised by all parties, of no “ use to the crown, and whose weak and wretched “ conduct in the court of Chancery, had almost brought

* Ibid. (ed. 1823) p. 219. note u. O. † Ibid. p. 220.

‡ Burnet, vol. v. p. 220.

“his very office into contempt. His removal however
 “was a great loss to the church, for which he had ever
 “been a warm stickler. And this loss was the more
 “sensibly felt, as his successor, my Lord Cowper, was
 “not only of the whig party, but of such abilities and
 “integrity, as brought a new credit to it in the na-
 “tion.”*

In 1710 the intrigues of Harley and *Mrs. Masham* (another female politician) worked a political change of ministry which displaced Lord Godolphin and other whig ministers. The Queen wished Lord Cowper to continue in his office of chancellor, but he did not choose to retain it with an administration of men diametrically opposed to his own political opinions and friends, he therefore resigned the seals.† They were put in commission for some weeks, Sir Thomas Trevor, Tracy and Scroop being appointed lords commissioners. Sir Simon Harcourt was subsequently created lord keeper, 19th October, 1710; and lord chancellor on the 13th April, 1713, with the title of Lord Harcourt.‡ Onslow

* “An account of the conduct of the Dowager Dutchess of Marlborough to the year 1710. In a letter from herself to my Lord.”—8vo. 1742. p. 147. This volume may be called a female companion to Bubb Doddington.

The lady (in p. 305) gives a very ingenuous account of the system of corruption then in vogue. “As to *selling Places*, which was the last thing ‘I was to clear myself from, I shall now give an account of my conduct with respect to this charge, from the time that I came first into any office at court.—Her Highness wrote me that she meant to make two new pages of the back stairs, and meaning that I might have the advantage of selling those two places. For it must be remarked, that at that time no person who was in any office in court, with places in his disposal, made any more scruple of selling them, than of receiving his settled salary, or the rents of his estate!”

† Historical Register.

‡ “The lord chancellor (Cowper) came upon all these removes, and delivered up the great seal; the Queen did not look for this, and was

speaks of him as "a man without shame, though very able." His defence of Sacheverel first brought him into public repute, and Onslow again mentions him incidentally, "He was afterwards lord chancellor, with no character in any station, but for his abilities, saving that of integrity in causes, which I never heard doubted. He had the greatest skill and power of speech of any man I ever knew, in a public assembly."* Lord Harcourt retained possession of the seals during the remainder of this reign.

There is a singular interregnum or chasm in the collection of Orders, with the exception of two, which are immaterial, from the year 1701 to 1721. One short order only, by Lord Harcourt, appears in Mr. Beames's volume.† As these corrective mandates were the only partial reform and improvement of the practice, the absence of all addition to them is a proof of the culpable neglect of the chancellors of that period, and a presumption that the abuses of the court not only were continued, but by such neglect materially increased.

The legislative measures in this reign, for the amendment of the law are entitled to a particular notice. The most remarkable and valuable was the statute "for the amendment of the law and the advancement of justice."‡ The bill was introduced into the house of Lords by Lord Somers, the ex-chancellor. Although the project more fully embraces the general improvement

surprised at it; and not knowing how to dispose of it, she with an unusual earnestness, pressed him to keep it one day longer; and the day following, she having considered the matter *with her favourites* Mrs. Masham and Mr. Harley, received it very readily, and it was soon given to Sir Simon Harcourt." Burnet, *Own Times*, vol. vi. p. 11.

* Burnet, vol. v. p. 427. † Beames, p. 321.

‡ Stat. 4 and 5 Anne, chap. 16.

of the common law than the Chancery practice and Equity jurisdiction, yet the particulars of this important measure are equally interesting to the historical and legal reader. The discussions in the upper house are not recorded, and the following extract therefore from the journals of the lords, not generally known, will display the sensible and sincere desire of the modellers of the law to accomplish its valuable ends.

“ The Lord *Somers* reported from the Lords committees appointed to consider what defects there are in the laws, which may be proper to be supplied or amended, and what doubts may be fit to be explained or cleared; and to consider of proper methods to lessen the expences of suits, and to make proceedings in courts of justice more expeditious, as followeth, (videlicet)

“ No advantage shall be taken of any count, plea in bar, replication or other plea, for any omission or defect therein, unless the party demurring thereunto shall specially shew such defect or omission for cause; but the court shall give judgment upon the substance mentioned and specified in such count or plea, without regard had to such defect.

“ All the statutes of *jeofails* to be extended to judgment given upon confession, *nihil dicit*, or non sum informatus.

“ All double pleas to be allowed; saving, that if any one be found defective or frivolous, or upon issue or verdict found for the defendant, costs shall be given, at the discretion of the court.

“ After issue joined, in any action to be brought in the courts of *Westminster*; upon oath made, that any witnesses cannot be present at the trial, by reason of their being to go beyond the seas, or by reason of sickness, or other infirmity; it shall be lawful, by rule of court, for the plaintiff or defendant, to exhibit interrogatories to such witnesses, to be examined thereunto, upon oath; before one of the judges of the said

court, or before Commissioners to be appointed under the seal of that court; which depositions may be made use of at the trial, in case the witnesses cannot be there; and the said depositions shall be afterwards entered or enrolled in the said court.

“ No challenges shall be to any array of any pannel of jurors for default of hundreders; but every *venire facias* shall for the future, be of the body of the county.

“ That in *ejectione firmæ*, or action of trespass, the court may order a view before trial; the sheriff shall be commanded, in the writ of *distringas*, or *habeas corpora*, to have the jurors to the place to view the same, in the presence of A. and B. that are appointed to shew the same.

“ All grants and conveyances of any rents, the reversion or remainder of any manors, messuages, or lands, shall be good and effectual, without any attournment of any tenant.

“ No dilatory plea to be received, unless the party pleading, or come on his behalf, do make oath of the truth thereof.

“ In debt upon any single bill, or debt on a *scire facias* upon any judgment, payment of the money shall be a good plea in bar thereof.

“ In debt upon any bond, with a condition or defeazance, to pay a lesser sum at a day, or place certain; if the money be paid after the forfeiture of the bond, that shall be a good plea in bar thereof; and if, at any time pending the action, the defendant shall bring all the principal, interest, and charges, the court shall give judgment, to discharge the defendant of any such bond; and if, after judgment such payment shall be made, the court shall discharge the defendant of such judgment.

“ It is declared, that, by three witnesses, requisite by the act of frauds and perjuries to prove a nuncupative will, shall be understood such as are allowed upon trials at law by the laws and customs of the realm.

“ Declaration of uses by deed, subsequent to a fine or recovery, shall be declared to be as effectual within that statute as if precedent.

“ No entry or claim to be allowed, to avoid the statute of limitations, or any fine; unless upon such entry an action shall be brought within a year; and prosecuted with effect.

“ The statute of limitations shall be extended to libels in the admiralty court for seamen’s wages, in the same manner as if an action upon a promise for the same had been brought in any of the Queen’s courts of record.

“ The plaintiff shall in no case be bound by the statute of limitations, if the defendant shall be beyond the sea at the time of the cause of action accrued, so as the plaintiff brings his action within six years after his return into this realm.

“ If the plaintiff be content to accept of a bail bond from the sheriff, the sheriff shall assign the same by indorsement under his hand and seal, and the plaintiff thereupon shall sue in his own name; and if the bond be forfeited, the court where the action is brought by rule, may impose such terms upon the defendant, and give such relief to the bail, touching such bond, as shall be agreeable to justice and reason; which rules shall have the effect of a defeazance as to such bond.

“ The debts that any defendant hath owing unto him may be attached in execution, in satisfaction for debt and damages recovered against him; and a day shall be given to the debtor to appear, the court shall give judgment for the plaintiff to recover so much as shall be attached, &c. as in *London* upon a foreign attachment.

“ That the warranty of tenant for life, descending upon any person in remainder shall be void and of none effect; likewise the warranty of any collateral ancestor, that had nothing in the land, shall be void against his heir, either to bar him of entry or action.

" No process to issue out of any court of equity till after the bill is filed; nor any service of a *subpoena* to be good, unless at the same time the defendant be served with a true copy of the bill, signed by the proper officer, at the plaintiff's charge, which is to be allowed him in costs, if he prevail in the suit; the defendant not to be obliged to take or pay for any other copy of the bill; and no copy or abstract of the bill to go with the *dedimus* or commission for taking the defendant's answer.*

The heads of this report were severally read and agreed to by the house, and it was ordered that the judges prepare a bill, and submit it for approval. On the 26th of January a draft of the act was presented and referred to the same committee that reported the heads of the bill.† On the first of February Lord Somers reported it from the lords' committees as fit to pass with some amendments, which were read twice, and agreed to.‡ On the 4th February it passed the lords, apparently without a division, and was sent to the house of commons by two of the judges.¶ On the second reading in the lower house it was referred to a committee.‖ Numerous petitions were presented against it by officers of the different courts, who affirmed that many clauses "greatly concern their practice, and praying to be heard by counsel touching the same."§ The committee reported progress on several days. On the 4th of March the bill was passed with amendments, and sent back for the lords' concurrence. On the 11th of the same month the lords' committees reported reasons

* Lords' Journ. vol. xviii. p. 68. 17 Jan. 1705.

† Ibid. p. 78.

‡ Ibid. p. 78.

¶ Ibid. p. 87. and Comm. Journ. vol. xv. p. 127.

‖ Ibid. p. 151.

§ Ibid. p. 151.

for their disagreement to some of the amendments made by the commons to the bill. In the Lords' Journals of that day a very full report appears of the proposed amendments and the objections: the propositions for the improvement of the equity practice occupy the largest portion of the report, but they are too voluminous and technical for quotation.* A conference was afterwards held between the two houses; and in the Commons' Journals will be found a detailed report of the discussions.† Some considerable debate and difference of opinion occurred in the commons, and on the 18th a division on the further consideration of the report took place, of 78 to 54. On the 19th the Commons' Journals again contain an interesting detail of reasons in support of their amendments. Some of these are so applicable to the important question of the preferable mode of obtaining evidence, *viva voce*, or written examinations, that the extract is well worth insertion in these pages.—

“ Mr. Pulteney reported from the Committee, appointed to draw up reasons to be offered to the Lords at a conference upon the amendments, made by this house to the bill, intituled, an act for the amendment of the law, and the better advancement of justice; that they had drawn up reasons accordingly, which they had directed him to report to the house: which he read in his place and afterwards delivered in at the clerks' table; where the same were read, and are as follow; viz,

“ The Commons do not insist upon their amendment to the bill, intituled, an act for the amendment of the law, and better advancement of justice, Pr. 2, L. 27, to leave out the clause, requiring attorneys to file their warrants.

* See Lords' Journ. vol. xviii. p. 146.

† Comm. Journ. p. 192. 11 March, 1706. p. 194.

“ But the Commons do insist upon their amendment, Pr. 3, L. 27, to leave out the clause, empowering the courts of law, after issue joined, to examine such witnesses as cannot be present at the trial, for the reasons following; viz.

“ 1st. For that, when a witness is examined in open court, upon any trial at common law, questions may be asked him upon a cross examination by the court, the jury (who should not be deprived of any lawful means whereby they may best be informed of the fact, whereof they are the sole judges) or by the counsel at the bar to sift out the truth of this evidence, nay, very often the disordered look of an evidence, a faltering in his speech, or such like circumstance, may be a guide to the jury, as to the credibility of the evidence; of which many instances might be given, were it not a matter already so well known.

“ 2dly. A witness when sworn and examined in the face of the court and country, will be under a greater awe of truth, and more cautious of not forswearing himself, for fear of being detected, and immediately committed by the court for perjury; in which case the court does at the same time usually direct a prosecution; whereas depositions (taken in the manner proposed by the clause) may be made by a profligate person, who (intending soon after to go beyond the seas and to continue out of the kingdom, or pretend sickness, or disability to attend, till after such depositions shall have been made use of upon the trial) may more easily be wrought upon to perjure himself, when he thinks he is without the reach of punishment.

“ 3dly. The Commons do admit to your Lordships, that depositions are allowed as evidence in trials at common law, where such witnesses are out of the kingdom, or under a disability to attend, though the witnesses be then living; yet they cannot but be of opinion, that the use of such evidence, upon trials at common law, ought, for the reasons above mentioned, to be as little encouraged as may be; to the con-

trary whereof (as the commons do conceive) the method, laid down by your Lordships in this clause will in time turn all *viva voce* evidence into paper proof, upon all trials at common law.

“ 4thly. It may happen very often, that the manner of wording such depositions (either through the ignorance, mistake or cunning of the clerk) may give a turn to the fact very different from what the witnesses meant, or from what might have appeared upon his examination *viva voce* in open court.

“ 5thly. Upon depositions taken in courts of equity, if the witnesses differ as to matters of fact, or the credit of the witnesses is suspected, the courts of equity are so far from relying on such depositions, that they direct issues to be tried at law, in order that the witnesses may be there examined in open court, where the credit of the witnesses will be considered ; but (as it seems to be intended) by this clause Depositions, taken at law in all courts, must be allowed as evidences.

“ And lastly, the commons are so sensible that the examination of witnesses *viva voce* upon trials at common law, is (by the experience of many ages) found to be grounded upon so good reason, and of such security to the property of the subject, that they cannot consent to so great (and as they conceive) dangerous an alteration in so fundamental a part of the law, as will be made by this clause : Nay, though the Commons should admit, that, in the particular cases instanced by your Lordships there may be an inconvenience, as the law in this point now stands, yet, they apprehend, such an alteration would produce a much greater inconvenience ; and which of the two is most to be avoided, ’tis no hard matter to determine.”*

On the 19th March the lords agreed to the amendments and finally passed the bill.†

* *Comm. Journ.* vol. xv. p. 198.

† *Lords’ Journ.* vol. xviii. p. 161.

It is to be regretted that no report exists of the various discussions on this important measure. The only mention of it in the Parliamentary History is a meagre paragraph, which, when collated with the observations of Burnet, appears to be a mere transfer from the latter historian.* The bishop records that " Lord Somers made a motion in the house of lords to correct some of the proceedings in the common law, and in Chancery, that were both *dilatory and very chargeable*: he began the motion with some instances that were more conspicuous and gross; and he managed the matter so, that both the lord keeper and judges concurred with him; though it passes generally for a maxim, that judges ought rather to enlarge than contract their jurisdiction. A bill passed the house, that began a reformation of proceedings at law, which as things now stand, are certainly among the greatest grievances of the nation: when this went through the house of commons, it was visible that the interest of under officers, clerks and attorneys, whose gains were to be lessened by this bill, was more considered than the interest of the nation itself: several clauses, how beneficial soever to the subject, which touched on their profit, were left out by the commons. But what fault soever the lords might have found with these alterations, yet to avoid all disputes with the commons, they agreed to their amendments."†

The general enactments of the statute which carried these legislative measures into effect are well known to the legal reader. The sections XII. and XIII., which relate to the court of Chancery, provided that no sub-

* Cobbett's Parl. Hist. vol. vi. p. 518.

† Burnet, Own Times, vol. v. p. 246.

pena should issue until after a bill is filed, except in cases of bills, for injunctions to stay wastes, or stay suits at law commenced. And that plaintiffs dismissing their own bills or not prosecuting them should pay to defendants their *full* costs to be taxed by a master.*

In 1704, the Lords ordered the registrars of the court of Chancery to lay before them a list of all causes depending; and on the same day, 3 April, they directed the six clerks, registrars and all other officers "in or belonging to the court of chancery, to lay before them lists of all fees taken or claimed by them, or any of them, for business done in their several offices in chancery."† On the 31st October, they were accordingly delivered;‡ but no consequences appear to have resulted from the possession of the information.

In 1706 several legislative plans for the reform, and improvement of the practice of the Six Clerks' office, were contemplated, and bills introduced into the house of commons; but the detail of the various *petitions* and *arts* which succeeded in preventing their enactment would be an unnecessary historical repetition of the fate and ill success of the preceding attempts to slay the Goliath of the law.¶

The statute 7. Ann. c. 21. in its preamble announces the design of improving the union, by accomplishing "an agreement, as near as may be, of the laws of both parts of Great Britain." This power of alteration and assimilation, thus wisely reserved by the treaty of union, might have been far more widely extended and acted upon than it has been; but the jealous prejudices

* Stat. 4, Anne, c. xvi. sec. xii. xiii.

† Lords' Journ. vol. xvii. p. 560.

‡ Ibid. p. 570.

¶ See Comm. Journ. vol. xv. Index. Parl. 2. Sess. 2. art. Chancery.

of the two countries, occasionally fomented by the lawyers, prevented so desirable an object being effected. The preamble above cited remained nearly a dead letter. Lord Hardwicke, in a letter to Lord Kames (dated 17 October, 1754,*) compliments the latter on the zeal he exhibited "for improving and perfecting the union of the two kingdoms, to which nothing can contribute more than an uniformity of laws. Those great men, who conceived and framed the plan of the union; who felt *quantæ molis erat Britanniam condere gentem*; wished to attain it, but found it impracticable in the outset; but I have reason to think, that they never imagined that near half a century would have passed, after their articles were established, without a greater advance being made towards it than has hitherto been attempted." Some recent legislative improvements of Scottish law procedure, and many publications of intelligent northern barristers, are indications of the eventual removal of this deep stain.

In this reign the first parliamentary committee appears to have examined into the expiring and obsolete laws. Of the numerous publications since the Revolution, to this period, reflecting on the state of the law, one tract deserves an especial mention, entitled, "Proposals humbly offered to the Parliament for remedying the great charge and delay of suits at law and in equity, by an Attorney."† This writer argues for the suppression of many insignificant offices, and reducing the fees of all; of remunerating the judges entirely by salary, instead of partly in fees: he justly contends that every office the

* Kames's *Memoirs*, vol. i. p. 212.

† 4to. London, 1707. pp. 24. It has been reprinted several times, a third edition, in 8vo., 1724.

duties of which are performed by *deputy* might well dispense with its superior officers: that the exorbitant fees of the registrars, and their imposition of unnecessary copies of orders should be reduced, and the brief forms of the clerks of the house of lords, in drawing orders upon appeals adopted. He shews the progressive increase of the fees of *all* the offices in consequence of the incumbents having bought their places dear, and therefore increased the charges of office, that they might not lose by their purchases. He asserts that counsels' fees have trebled since the revolution, and that it is hard that the *Attorneys* should alone be visited with the popular denunciation, "Woe unto ye Lawyers." This excellent writer then enumerates the several causes of delay in legal proceedings; those relating to the court of Chancery he particularly exposes;—a court, which he says, "for the charge and delay of it, is become formidable to all mankind." So many of the alledged causes of delay and expence still exist, that the following short and admirable enumeration of them is cited in the words of the pamphlet:—

"1. The great number of processes before you can come to a sequestration, and the many niceties in suing out and returning them, which frequently is adjudged irregular, and the Plaintiff pays costs for it, and is forced to begin again.

"2. That there can be no decree against a Defendant that has not appeared, though you have run out all process of contempt against him.

"3. The tedious way of compelling a dilatory defendant to appear, and put in a full answer, and the great length of the returns of the Commissions to take answers.

"4. The great and unnecessary charges and delay of petitioning, or moving for subpoena's returnable *immediate*, Orders

Nisi, and many other things of course, for which there's little reason can be given.

" 5. The great delay in granting Orders for long time to answer, &c.

" 6. The unreasonableness of allowing the Plaintiff only 40s. cost for an insufficient Answer, when he for most part is delayed a Term, and necessarily spends £4. or more.

" 7. The expensive ceremony of exhibiting Bills of Revivor upon the death of a party, which frequently happens where there are many parties, and is a great charge and delay.

" 8. The unjust preference and post-poning of causes, which was first left off to be practised by the glorious Lord Chancellor Cowper, and which tho' not now practised it will be good to guard against his successors, and to oblige them to hear all causes in course.

" 9. The delay by re-hearing causes, Pleas, Demurrers and Exceptions, which would not so frequently be, if the party desiring the same was to pay full costs (as in reason he ought) if the Order appealed from was affirmed, and those Re-hearings were always to be set the first in the paper.

" 10. Above all, there's the great charge and delay before the Masters, the very worst part of the business of that Court, and more than all other wants to be redrest.

" 11. The ordering money into a Master's hand, and he to put it out on security, to be approved of by himself, by which means he becomes in a great measure judge how long he thinks fit to keep the money; and by this means Orphan's money frequently lies dead (to them) a long time. But whoever thinks the Masters make no use of the money, nor make more gains than formerly, must be at a loss for a reason why they now give £6000. for their places, which at the Revolution were sold only for about £1000.

" 12. The long time before a Bill can be dismissed for want of prosecution.

" 13. That Commissioners to examine Witnesses and their Clerks, are not upon Oath, which lets them at liberty to discover evidence, and introduces perjury, new Commissions, &c.

" 14. The great delay in the Registers in drawing up Orders.

" 15. The tedious and chargeable way of enforcing obedience to Orders and Decrees, and the insignificant expence of inrolling Decrees.

" These, with many more I could name, may easily be redrest, and put into a speedier and better Method, so that all Causes might be begun and ended in a Year, or less, except where it appeared Witnesses were beyond sea, or could not otherwise be had; and certainly he that has a year's time to deliberate on a Cause in *Chancery*, cannot say he's surprized, or wants time to prepare for his defence."

This disinterested professional writer concludes by urging the parliament to reform the practice of the law, as one of the greatest glories of the reign of Anne.*

* "The Law of England is the greatest grievance of the nation, very expensive and dilatory; there is no end of suits, especially when they are brought into *Chancery*. It is a matter of deep study to be exact in the law; great advantages are taken upon inconsiderable errors; and there are loud complaints of that which seems to be the chief security of property, I mean Juries, which are said to be much practised upon. If a happy peace gives us quiet, to look to our own affairs, there cannot be a worthier design undertaken than to reduce the law into method, to digest it into a body, and to regulate the *Chancery*, so as to cut off the tediousness of suits, and, in a word, to compile one entire system of our laws; the work cannot be undertaken, much less finished, but by so great an authority as at least an address from the House of Lords to the Queen. Nothing, after the war is so happily ended, can raise the glory of her reign more than to see so noble a design set on foot in her time: this would make her name sacred to posterity which would sensibly

Another excellent pamphlet appeared in 1707,* which broadly states that "the unavoidable expence, as well as unnecessary delay, in the prosecution of suits in the courts of law and equity, (especially in the latter) are become so exorbitantly great and burthensome to the subject, that they may justly be ranged among our first-rate grievances. It must be granted by every man of common observation, that the methods of proceeding in our courts (designed for speedy justice) are fully ripe for a regulation, when a passive submission to injuries (unless of a very high nature) is much more for the advantage of the injured person, than an application to our courts for redress."

His remedial suggestions are numerous and practical: he contends that no suitors ought to be obliged to take unnecessary copies of interrogatories, reports, certificates, or affidavits: that all recitals in decrees and orders in courts of equity should be disused; he shrewdly observes that in the reading of orders and decrees in court, the equity judges never permit *their* time to be wasted in the reading of any introductory matter, and that no such recitals or allegations are used in orders on appeals in Parliament, nor in rules or judgments at law.

In 1704, a poetical writer made the court of Chancery the subject of his satirical muse,† and from the preface

"feel all the taxes they have raised fully repaid them, if the law were made shorter, clear, more certain, and of less expence."—*Burnet, Own Times*.

* "Reasons humbly offered to both Houses of Parliament for passing a bill for preventing delays and expences in suits in Law and Equity. London, 1707." 4to. pp. 22.

† "The Locusts or Chancery painted to the life, and the Laws of England tried in formâ pauperis, a Poem. *Odi profanum vulgus et arceo*. Horace, Lib. 3. Ode 1. London, 1704." 4to.

it is probable that his character had been roughly treated by some equity advocate in a recent suit. He affirms that our barristers do not take for their example Tully and Demosthenes, but adopt a mere "Billingsgate Dialect."—"Nay, 'tis notoriously scandalous, that in our courts of justice, and particularly in Chancery, men's reputations, (which the law has always had equal regard to, and been as tender of, as men's estates) should lye at the mercy of a lawyers tongue, and be publicly aspers'd in open court, perhaps upon the bare allegations of his adversary, or some malicious suggestions from the attorney, or solicitor, and without affidavits, or any manner of evidence, to prove what they alledge: If such things are to be tolerated, 'tis in vain for any man to value himself upon his fame or honour. For if he have a cause in chancery, he must expect to be traduc'd and vilified, how cautious soever he has been to preserve his reputation before-hand."—He thus invokes his muse:—p. 1.

"How this sad change of state Apollo tell,
Our laws, like Lucifer, from heav'n fell,
To raise a Chancery here, as he from Heav'n made Hell.
Aid me, all ye infernal pow'rs, to draw
This huge, fell, monstrous hydra of the law."

In the progress of the poem he satirises the different officers of the court, and the system on which they thrive. He asserts the superiority of the general law of the country if the court of Chancery could be abolished:—p. 18.

"The Roman laws with English ne'er could vie,
If England was but purg'd from Chancery;
That first a great allay of Roman had,
But now's the very sink of all that's bad,

How well our liberties survive by law,
 That serve the good and keeps the bad in awe,
 But how notorious does the villain thrive,
 By Equity, if he has in his hive
 Honey enough to keep the swarm alive ?
 Else like true drones they die for want of food,
 For they can nothing do, that is, no good."

The integrity and dispatch of the Common law judges he eulogises, and contrasts with the dilatoriness and hungry impositions of the chief officers of the Chancery:—p. 20.

" Aurelius has so well his court improv'd,
 For law he's followed, and for justice lov'd.
 And if slow Chanc'ry quick relief deny,
 As well as law distributes equity.
 Not trapp'd with state, and so ty'd up by rules,
 To fetter wise men and to ruin fools ;
 But here dispatch does on the needy wait,
 For law, if out of time, comes oft too late,
 Unless't be to conclude a wretches fate."

An important legal controversy subsisted in various published works during this and the preceding reigns, on the subject of a *Registry* for the registry of deeds, which will be noticed in a subsequent chapter. By statute 2, Anne, c. 4, a Registry is to be kept of all deeds, conveyances, wills, &c. which affect any real property executed in the West Riding of Yorkshire, and a public office erected for that purpose, the Registrar to be chosen by freeholders having £100 per annum. The Statute 6 Anne, c. 35, extended the register to the East Riding, the Registrar to be sworn by the magistrates in Quarter Sessions, and every leaf of his book signed by two justices. By Statute 7, Anne, c. 7, a

similar registry was extended to the county of Middlesex. Other Statutes in this reign provide for the partial enrolment of certain deeds.*

It has been seen in this chapter how little was effected in the glorious object recommended by Burnet. Her Majesty's parliaments made law in abundance, by adding to the statutes three hundred and thirty-eight Public, and six hundred and five Private acts !

The contemporary reporters were as follows :—

ANNE.—1702.

Brown (Parliamentary cases), 1 to 13	<i>Modern (K. B. C. P. Exch. and Chan.)</i> , vol. 6, 2 to 3
Bunbury (Exchequer), 12 to 13	<i>Modern (K. B. C. P. Exch. and Chan.)</i> vol. 7, 1
Cases concerning Settlements (K. B.), 1 to 13	<i>Modern (K. B. C. P. Exch. and Chan.)</i> , vol. 10, 8 to 13
Cases on Practice (C. P.) 5 to 13	<i>Modern (K. B. C. P. Exch. and Chan.)</i> , vol. 11, 4 to 8
Colles (Parliamentary cases), 1 to 8	Parker (Exchequer), 6 to 12
Comyns (<i>K. B. C. P. Exche- quer, Chancery, and before the Delegates</i>), 1 to 13	<i>Peere Williams (Chan. and K. B.)</i> , 1 to 13
Dickens (<i>Chan.</i>), a few cases	Practical Register (C. P.), 3 to 13
Fortescue (<i>K. B. C. P. Exch. and Chan.</i>), 1 to 13	<i>Precedents in Chancery</i> , 1 to 13
Freeman (<i>K. B. C. P. Exch. and Chan.</i>) 1 to 5	Lord Raymond, (K. B. and C. P.) 1 to 13
Gilbert's Cases in Law and Equity, 12 to 13	<i>Reports in Chancery</i> , 4 to 8
Gilbert (<i>K. B. Chancery and Exchequer</i>), 4 to 13	Reports temp. Holt, 1 to 9
Sir J. Kelyng (Crown cases and in K. B.)	<i>Robertson's Appeal Cases (K. B. C. P. Exch. and Chan.)</i> 5 to 13
Lutwyche (C. P.), 1 to 2	<i>Salkeld (K. B. C. P. Exch. and Chan.)</i> , 1 to 10
	Sessions Cases (K. B.) 9 to 13
	<i>Vernon (Chancery)</i> , 1 to 13

* Stat. 10 Anne, c. xviii.

CHAPTER XI.

OF THE COURT OF CHANCERY,
DURING THE REIGNS OF GEORGE I. AND GEORGE II.,
A. D. 1714 TO 1760.

By one fetch or pretence of Equity or other, most Suits of value are now brought in *Chancery*, insomuch that I verily believe two thirds in number, or at least two thirds in value of the questions touching property decided in Westminster Hall, instead of being decided by four learned judges acting by known laws, assisted by a jury for ascertaining of facts on hearing witnesses *vidâ roce* in the presence of each party (and which certainly is preferable to all other methods used either here or in any other part of the world) are now adays decided in *Chancery* without a Jury, on written evidence. And tho' the Judge there was endowed with all the wisdom, learning and perfection human nature is capable of, yet he is but one man, and we are told by the spirit of truth, that *in the multitude of counsellors there is safety*. This exchange of jurisdiction cannot be very agreeable to an Englishman.—*Proposals humbly offered to Parliament for remedying the great charge and delay of Suits at law and in Equity. third edition, London, 1724, p. 47.*

Resolved. That it is the opinion of this Committee, that the long disuse of public enquiries into the behaviour of the officers, clerks and ministers of the Courts of Justice has been an occasion of the increase of unnecessary offices, and given encouragement to the taking illegal fees.—Resolved, &c. That the interest which a number of officers and clerks have in the proceedings in the court of *Chancery*, has been a principal cause of extending bills, answers, pleadings, examinations, and other forms, and copies of them, to an unnecessary length, to the great delay of justice, and the oppression of the subject.—*Report of Parliamentary Committee, 1740. Commons' Journals, vol. xxi. p. 892.*

ON the accession of George I. the nation was too much occupied in party divisions, in hopes and fears of the *Pretender*, to bestow any attention on the state of the laws; the contentions of the Hanoverian and Jaco-

bite parties absorbing all the political interest and feelings of the country.

On the arrival of the new king, Lord Cowper, who on the demise of Queen Anne had been nominated one of the lords justices of the country, was re-appointed Lord Chancellor. He continued in this office, with an industrious devotion to its duties, till the year 1718, when he conscientiously resigned the seals on a change of ministry. The king in consideration of his great merit and public services raised him to the dignities of a viscount and earl; and the latin preamble of his patent records, in remarkable terms, his judicial ability and superiority.* This chancellor has the distinguished honour of being the first judge who refused to receive the new year's gifts of the officers of his court, a praiseworthy example which all his successors followed. His appointment was particularly obnoxious to the tories who were greatly prejudiced against him; but it is recorded that he had scarcely presided in his high station one year before the scales became even, with the applause of both parties.† Ambrose Philips paid a poetical tribute to his memory, and thus bears testimony to his incorrupt judicial character—

“ He the robe of justice wore
Sully'd not as heretofore,
When the magistrate was sought
With *yearly gifts*. Of what avail
Are guilty hoards? for life is frail;
And we are judg'd where favour is not bought.”

* Hughes's Letters, vol. iii. appendix, p. xxxvi.

† True Briton, No. 39.—Hughes, in a letter dated May, 1718, writes to Cowper—“ I congratulate your lordship on your being honourably eased from a very great burthen; the constant fatigue of which must have made it uneasy, and might have proved prejudicial to your health.”

On Lord Cowper's resignation, the seals were again temporarily placed in commission with Tracy, Sir John Pratt and Sir James Montague.

On the 18th April, 1718, Thomas Parker, lord chief justice of the court of king's bench, was created lord chancellor, and subsequently Earl of Macclesfield. He originally practised as an attorney in Derby, and was afterwards called to the bar, where his talents, industry and success on the midland circuit, brought him into general notice and high repute. He early sought the political road to preferment, which soon led him to the highest judicial offices. It is but just, however, to record that he is the first lawyer represented to have refused an absolute offer of the seals from a conscientious difference of political opinion with the (Harleian) ministry. In 1710 he was made lord chief justice of the king's bench: his previous practice and studies had not qualified him to administer equity law.

The official conduct of this lord chancellor was the well known subject of a parliamentary impeachment, and from the proceedings of the trial an unusual insight is gained into the state of the courts of equity.

For some years previous to the impeachment of Lord Macclesfield, the public complaints against the abuses of the court of Chancery had been reiterated in more frequent and bitter terms than at any former period; and although this Chancellor was undoubtedly guilty of divers mal-practices and official corruptions, yet there is some reason to believe that the sins of his predecessors were visited upon him, a cloud of popular indignation which had gathered for half a century, bursting on his chancellorship. The places and offices of the court had long been notoriously and openly bought and sold; and perhaps the only difference in the conduct of Lord

Macclesfield was, that he trafficked in times when the good sense of the nation viewed such practices in their proper light.* Oldmixon, a contemporary historian of talent and general impartiality, thus states the above facts:—

“ There had been for some time a murmuring against
 “ the insufficiency of the masters in Chancery, to answer
 “ the great sums lodged in their hands by the suitors in
 “ that court, and it was suspected, that the large sums
 “ they paid for admission into their places, made their
 “ way more easy than it ought to have been, and very
 “ much lessened the inquiry into their qualifications for
 “ them. ’Tis true this abuse had been long growing up
 “ to this enormity, and there was hardly any commodity
 “ in a market bought and sold more freely and openly
 “ than a Master in Chancery’s Place. The suitors’
 “ money for which they paid no interest, brought them
 “ in great interest from the funds, and the profits of the
 “ place being consequently doubled and trebled at least
 “ to what they were, before there was such an opportu-
 “ nity to enrich themselves by the advantages they made
 “ of the money they had in their hands. ’Tis no wonder
 “ the Lord Keepers and Lord Chancellors doubled and
 “ trebled the price they were to pay for admittance, which
 “ had risen from one thousand to three thousand pounds
 “ in my remembrance, who being intimate with several

* So notorious and justified was this custom of place-dealing that in the debate upon the bill for enabling the Lords Commissioners of the great seal to execute the offices of lord chancellor and keeper, (stat. 1, William and Mary, c. 21,) a clause prohibiting the sale of places of Masters of Chancery was rejected by the Lords! “ A question was proposed, ‘ whether it shall be recommended to the Committee, to draw up a clause, to be added to the bill, that masters of Chancery’s places shall not be sold,’ the question was put, whether this question shall be now put, *It was resolved in the negative.*” *Lords’ Journals*, vol. xiv. p. 161. 25 March, 1689.

“ of them ; as Mr. Medlicot, Mr. Rogers, Mr. Lovibond, Mr. Browning, have heard this matter frequently
 “ discoursed of before there was any whisper of imputing
 “ it as a crime to the Earl of Macclesfield, lord chancellor. But from a complaint in general, it came to a
 “ charge in particulars, and the Earl finding it was
 “ impracticable for him to prevent it, or keep the great
 “ seal under it, he resign'd his high office in the beginning of January.*

The various petitions and early proceedings antecedent to the Earl's impeachment may be seen in the journals of the two houses of parliament ; but it is only necessary to state that their details amply prove the corrupt and infamous state of the court.† A royal message, 9th February, 1725, specially directed the Commons to investigate charges against the Masters in Chancery, and to remedy the abuses complained of. In the debate on this message, on the 12th, Sir George Oxenden moved the impeachment of Lord Macclesfield, it appearing by reports “ drawn up by persons of the greatest weight and authority, that enormous abuses had crept into the high court of Chancery, chiefly occasioned by the magistrate, who was at the head of that court, and whose duty, consequently, it was to prevent the same ; that the crimes and misdemeanours of the late Lord Chancellor, were many, and of various natures, but might be reduced to these three heads : 1. That he had taken into his own hands the estates and effects of many widows, orphans, and lunatics, and either had disposed of part of them arbitrarily to his own profit, or connived at the officers under him making advantage of the same.—

* Oldmixon's History, vol. iii. p. 758. And see Tiudal's Rapin.

† Lords' Journ. vol. xxiii. and Comm. Journ. vol. xx.

2. That he had raised to an exorbitant price the offices and places of the masters of chancery, and in order to enable them to pay to him those high prices and gratuities for their admission, had trusted in their hands large sums of money belonging to suitors in Chancery. 3. That in several cases he had made divers irregular orders. So that in his opinion, that first magistrate in the kingdom, was fallen from the height of the dignities and honours to which he had been raised by the king's royal bounty and favour, to the depth of infamy and disgrace."*

This motion was seconded by Mr. Strickland and Mr. Doddington, who said that "the misdemeanours of the late lord chancellor were of the greatest and most dangerous consequence, since most of the estates in England, once in thirty years, pass through the court of Chancery."† On the 18th of March, Sir G. Oxenden reported from the committee appointed to draw up the impeachment against Lord Macclesfield, twenty-one articles of accusation. These charges are specific details of general corruption in office, in sale of offices and for illegal and dishonest judgments. The reader is referred for the details of the impeachment, evidence and defence, to the voluminous and verbatim report of the trial before the Lords, commencing the 6th and terminating on the 31st of May, 1725.‡ An impartial examination of this singular proceeding and evidence would occupy too great a space in these pages, and rather appertains to the particular case of an individual chancellor than to the general subject of the court. One part of his answer to the articles broadly justifies the sale of offices and welcome presents on the ground of

* Cobbett's Parl. Hist. vol. viii. p. 416.

† Ibid. p. 417.

‡ Howell's State Trials, vol. xvi. p. 768.

precedent, furnished by all his predecessors ;—" by way
 " of general answer to such of the said articles, as re-
 " late to the making any present by persons admitted
 " to the office of masters in chancery, the said Earl
 " doth say, that the same hath been long used and prac-
 " tised in the time of his predecessors in the said office,
 " and that such presents have been reckoned amongst
 " the ancient and known perquisites of the great seal,
 " and the making and accepting thereof has been noto-
 " rious to all the world, and never before looked upon to
 " be criminal, or complained of as such ; and the said
 " Earl humbly hopes, that the giving or receiving of a
 " present on such occasion is not criminal in itself, or by
 " the common law of this realm, and that there is not
 " any act of parliament whatsoever, by which the same
 " is made criminal, or subject to any punishment or
 " judgment, which can be prayed in this prosecution ;
 " and the said Earl thinks himself obliged humbly to lay
 " this before your Lordships, not only in his own de-
 " fence, but in vindication of the honour of so many
 " great and excellent men, who have been his predeces-
 " sors in the said office, and have all along done the
 " same, for which the said Earl is now complained of,
 " and of others having been lords Chief Justices of the
 " King's Bench and common pleas, masters of the rolls
 " and other judges, who have likewise received presents
 " in money, upon the admission of the several and res-
 " pective officers under them, in several courts of jus-
 " tice, and who, the said Earl is assured, never appre-
 " hended themselves to be guilty of any crime against
 " any the good and wholesome laws or statutes of this
 " realm."

It is perhaps an unquestionable evidence of the general guilt of Lord Macclesfield, that he was condemned by all his peers, not one of the ninety-three who gave judgment pronouncing *not guilty*. He was sentenced to pay a fine of £30,000; a pecuniary mulct being the most severe species of punishment for peculation. He was committed to the tower, where he continued six weeks, until the fine was paid; and the king soon after the termination of the trial, erased his name from the list of privy counsellors. The Commons, in an address to his Majesty, requested that the fine should be applied towards making good any of the losses of the suitors occasioned by the deficiency of the Masters, to which the king assented.*

Such, in a lawyer's phrase, is the *abstract* of this trial. On the seals being taken from Lord Macclesfield they were committed to the keeping of Sir Joseph Jekyll, master of the rolls, Sir Jeffery Gilbert, one of the barons of the exchequer, and Sir Robert Raymond, one of the justices of the king's bench, who having in council taken the oath as Lords Commissioners, his Majesty was pleased to express himself to them as follows:—

“ I have had such experience of your integrity and
 “ ability, that it is with pleasure I now put the great
 “ seal into your hands. You are fully inform'd of the
 “ state of the accounts of the masters in Chancery. I
 “ earnestly recommend to you the taking effectual care,
 “ that entire satisfaction be made to the suitors of the
 “ court, and that they be not expos'd to any dangers
 “ for the future; and I have such confidence in the
 “ faithful discharge of the trust I now repose in you,
 “ that I am persuaded you will look narrowly to the
 “ behaviour of all the officers under your jurisdiction,

* Comm. Journ. vol. xx. May 31, 1725.—Gent. Mag. vol. v. p. 200.

“ and will see that they act with the strictest regard to justice, and to the ease of my subjects.”*

Their official rule was of short duration, as the seals were given in a few months to Lord King, 1st June, 1725.

Some strong and pointed remarks were boldly advanced in the publications of the day, shewing that the common law of England was corrupted into a despicable state of intricacy, expence and confusion, by new forms of practice; that the origin of the evil was in the excessive length of proceedings, considering the many copies that must necessarily be made, the allowing so many *deputies* in place of principals, the modern practise of “perquisite taking,” and the confederacies entered into by the under offices for the effective carrying on of these malpractices; that the forms of bills and answers in Chancery might be much shortened, by leaving out unnecessary repetitions; that unnecessary forms were used in taking depositions of witnesses; that in decretal orders, the substance of bills and answers was repeated; and that in drawing orders, former orders (which might be produced) were recited, the recital of which was of no use.†

A legal work of this period also reveals the state of the court, and the sinister interests which impeded its reform.‡ “It will be too hard for one man to drive back to

* Oldmixon's Hist. vol. iii. p. 758.

† Fogg's Journal, No. 148 and 252. Universal Spectator, No. 126.

‡ “The History of the Chancery relating to the Judicial power of that Court, and the rights of the Masters. 1726.” 12mo. This little volume, in the Harleian Catalogue, No. 1829, intitled “Burrough's History,” gave rise to the controversy and learned publications enumerated in note, page 35 *ante*; although those volumes were published at this period, the author does not further notice them, because the disputed point of jurisdiction is both immaterial and agreed, and would also involve a long digression from the main subject of enquiry.

" its proper current, a court that has gone on in a rapid
 " course of unlimited power. If an order is but made
 " to cut off a burthensome expence, to shorten the old
 " lengths for the benefit of the suitors, a defalcation,
 " though never so small, runs to the very quick in
 " *Chancery-Lane*. Malice goes to work, clamours,
 " outcries, and oppositions arise, and in the end may
 " grow more than one man perhaps could tell how to
 " deal with: but further, the ordinary business of the
 " court has long been too much for one, and enough for
 " two. It happens by some means or other, that almost
 " all causes both great and small *drop* into its *cistern*;
 " the intervals must be few to think of reformations: it
 " was not lawful for the *Prætor Urbanus* to hear causes
 " after sun-set, but ours we see post on till *midnight*, to
 " master and keep down the business of his court.
 " *Hujus sors ea fuit, Juris dicundi, in qua gloriam*
 " *conciliat magnitudo Negotii, gratiam, Equitatis lar-*
 " *gitio; in quæ sorte sapiens Prætor Offensionem vitat*
 " *æquabilitate decernendi, benevolentia adjungit lenitate*
 " *audiendi.*"*—p. 116.

It was natural to expect that the extraordinary scenes
 of judicial corruption and abuse disclosed in the trial of
 Lord Macclesfield, would have led to some important
 legislative measures for the general reform of a court,
 the proceedings of which had been thus exposed and
 held up to public contempt. No such benefits however
 resulted. The task was too herculean to be undertaken;
 but no time elapsed before the legislature passed "An
 act for indemnifying the Masters in Chancery, upon
 their discovering what consideration, price, or gratuity
 they paid or agreed to pay for the purchase of, or for

* Cic Orat pro L. Murena.

their admission to, their respective offices.”* Such facts, though scarcely credible, are nevertheless true! Instead of enumerating or citing the numerous publications which appeared at this period, on the subject of the malversations in the masters’ offices, the remarks by Oldmixon will suffice:—

“ The great deficiencies in the cash of the masters in Chancery, belonging to the suitors in that court, appeared to be £82,301. 19s. 11½d. as by an account drawn up with great accuracy by Nicholas Paxton, Esq. solicitor to the treasury, and laid before the House of Lords, the 12th of March, viz.

	£.	s.	d.
In Mr. Conway’s office	5,809	14	9½
In Mr. Dormer’s office	31,799	15	10½
In Mr. Borret’s office.....	23,592	9	3½
In Mr. Godfrey’s office	21,100	0	0
	<hr/> £82,301 19 11½ <hr/>		

“ Which must have been lost to the suitors, if the legislature had not interposed, and past a bill for their relief, by laying a duty on vellum and parchment, made use of for writs, &c. for thirty-two years. An act also was passed, for the better securing the monies and effects of the suitors in Chancery : And happy had it been for the subject, if the act had further relieved the suitors in that court, by regulating the litigious, tedious and expensive suits, and the enormous extortions of hungry solicitors, and the vexatious and chargeable attendances upon Masters, &c. which render even a Court of Equity, equally ruinous and terrible, in too many instances.”†

The acts here alluded to are the statutes 12, George I., chapter 32, “ An act for the better securing the monies

* Stat. ii. Geo. I. c. 2.

† Oldmixon’s History, vol. iii. p. 784.

and effects of the suitors of the court of Chancery ; and to prevent the counterfeiting of East India Bonds, &c." and the subsequent statute, chapter 33, entitled " An act for the relief of the High Court of Chancery," better known as creating the remedial and valuable office of Accountant General. The preambles and recitals of these statutes furnish indisputable evidence, had any been wanting, of the unexaggerated truth of the charges of malversation. The journals of the Lords and Commons of the same year, in recording the proceedings on the different stages of these bills in their progress to the royal assent, will also yield ample details of the legislative investigation and measures, to any reader who may consider their voluminous entries interesting or important.*

It is scarcely necessary to inform the legal reader, that the Masters in Chancery of this period, not only embezzled the interest monies of the suitors, but also the principal.†

No further legislative measures were taken in the reign of George I., and this court passed to his successor unreformed, as it had been left by the Stuarts. The statutes however received more than their usual average addition, in three hundred and seventy-seven Public and three hundred and eighty-one Private acts.

* Comm. Journ. vol. xx.—11, 12, Geo. I. Parl. 2, Sess. 3 and 4. 1724—6.

† The new Commissioners directed the publication in folio of " The Accounts of the several masters of the High Court of Chancery ; of the securities, effects and cash belonging to the suitors of that Court, deposited in their respective hands. Published for the information of the said suitors. London, 1725."—See also " The case of Orphans considered from Antiquity, with some remarks on our Court of Wards, and why put down ; as also the Court of Chancery having the disposition of Orphans' Money. London, 1725."

In the beginning of the last century, Glynn told judge Finch, with a sneer, that all the Common Law books of the realm might be carried in a wheelbarrow: this could not now be asserted of the reports of the court of Chancery.

The contemporary reporters were as follows :—

GEORGE I.—1714.

Barnardiston (K. B.), 12, 13	<i>Modern (K. B. C. P. Exch. and Chan.)</i> vol. 10, 1 to 11
Brown (Parliamentary cases), 1 to 13	<i>Moseley (Chancery)</i> , 12 to 13
Bunbury (Exchequer), 1 to 13	Parker (Exchequer), 4
Cases concerning Settlements (K. B.), 1 to 13	Practical Register (C. P.), 1 to 13
Cases of Practice (C. P.) 1 to 13	<i>Precedents in Chancery</i> , 1 to 8
<i>Comyns (K. B. C. P. Exchequer, Chancery, and before the Delegates)</i> , 1 to 13	Raymond, (Ld.) (K. B. and C. P.) 1 and 10 to 13
<i>Dickens (Chancery)</i> , 1 to 13	Robertson (Appeal cases), 1 to 13
<i>Fortescue (K. B. C. P. Exch. and Chan.)</i> , 1 to 13	<i>Select Cases in Chancery</i> , 10 to 13
<i>Gilbert (K. B. Chancery and Exchequer)</i> , 1 to 12	Sessions Cases (K. B.) 1 to 13
<i>Modern (K. B. C. P. Exch. and Chan.)</i> , vol. 8 and 9, 8 to 12	<i>Strange (K. B. C. P. Exch. and Chan.)</i> , 2 to 13
	<i>Vernon (Chancery)</i> , 1 to 5
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The following singular Protest from the Journals of the House of Lords (3 Feby. 1721) is a curious instance of the inconvenience of the two offices of Chancellor and Speaker being held by one man. Parliaments formerly met at early hours.

Die Sabbati 3^o Februarii, 1721.

“ The Lord Chancellor coming late to the House, and not having sent to the Lord Chief Justice *King*, whom his Majesty, by Letters Patent under the Great Seal, enter'd in the Journal, had authorized to supply the Place of the Lord Chancellor in the House, in his Lordship's Absence, and ob-

serving some Uneasiness amongst the Lords, acquainted the House, that he having been summoned to attend his Majesty at *St. James's*, had accordingly waited upon his Majesty there, where he was detained longer than he could foresee, by his Majesty's Command, and that as soon as he was at Liberty he came hither with the utmost Expedition, and asked Pardon for his Stay of the Lords, who had been so long kept in Expectation of him.

"A Motion was made to adjourn, and the question being put, whether this House shall be now adjourned till *Monday Morning* next, Eleven a-Clock ?

Contents 31. Not Cont. 49. It was resolved in the Negative.

Dissentient,

"1st. Because the House standing adjourned to this Day at Eleven a-Clock, and a great Number of Lords being met, and expecting the coming of their Speaker till near three a Clock, they seem'd to us generally to resent this Usage, and without any Dissent, that we could perceive, proceeded, according to the standing Order of this House, towards chusing a Speaker; but meeting with some Difficulties as to the Persons nominated, the Lord Chancellor came before any Choice made; and as soon as the House was sat, the Lord Chancellor alledged, as the Reason of his long Absence, That he had been summoned to attend his Majesty at *St. James's*, where the Business had lasted much longer than was expected: which Excuse, though it might in great Measure free the Lord Chancellor from the Imputation of wilful Neglect of Duty, yet it seem'd to us in no Degree to justify the Indignity which we think was upon the whole Matter done to the House, which is undoubtedly the greatest Council in the Kingdom, to which all other Councils ought to give way, and not that to any other; and therefore the Business of any other Council ought not to have detained the Speaker of this House after the Hour appointed for its Meeting, and during the Time of the Day the House has usually of late spent in Business; and therefore we thought the least Resentment the House could shew on this Occasion, to prevent its being used so for the future, was to adjourn without entering on any Business; and this the rather, because we foresaw it could not obstruct any public Affairs, since the Time was so far spent, as that no Business of Consequence could well have been gone through with Effect, though enter'd upon.

"2dly. As we may venture to say, That the Dignity of this House has not been of late Years increasing, so we are unwilling that any Thing we conceive a gross Neglect of it, should pass without some Note on our Records, that we were sensible of such Neglect, and did not approve it; which we thought would have been in some Measure attained by an imme-

diate Adjournment, nor was any other Method proposed; and since that could not be effected, we enter this Dissent, with our Reasons, that it may appear to Posterity we were zealous to withstand, in the manner proposed, the further progress of a practice so injurious, as we conceive to the honour and authority of this supreme council.

<i>W. Ebor,</i>	<i>Guilford,</i>	<i>Treor,</i>
<i>Uxbridge</i>	<i>North and Grey,</i>	<i>Ashburnham,</i>
<i>Weston</i>	<i>Litchfield,</i>	<i>Bristol,</i>
<i>Boyle</i>	<i>Bathurst,</i>	<i>Foley,</i>
<i>Cowper</i>	<i>Osborne,</i>	<i>St. John de Bletsoe,</i>
<i>Somerset</i>	<i>Strafford,</i>	<i>Fran. Cestriens,</i>
<i>Scarsdale</i>	<i>Craven,</i>	<i>Aberdeen,</i>
<i>Bingley</i>	<i>Mountjoy,</i>	<i>Compton."</i>
<i>Maynard,</i>		

GEORGE II.

A. D. 1727 to 1760.

From this reign may be dated the commencement of a *real* investigation into the abuses of the court of Chancery; since which, we shall see how few beneficial results, in the course of a century, have followed numerous *enquiries* and *reports*!

In the official incompetency of Lord Chancellor King, may be said to have originated the numerous and active parliamentary enquiries into the state of the courts of justice and the fees of their officers, which began about the year 1730. Lord King was utterly ignorant of the principles of equity when he first obtained the seals; and his biographer states, that in endeavouring to supply the defects of his restricted common law knowledge, and to inform himself of the business of his court, he impaired his constitution, and ultimately induced a paraly-

tic disorder.* A greater proportion of his decrees were reversed in the house of Lords than of any other chancellor in an equal period of time. A singular anecdote is mentioned of this chancellor, by Mr. Bentham, in a letter in Cooksey's Character of Lord Somers, which fully explains the *sleeping* of Chancery causes during Lord King's chancellorship. " Lord King became so far advanced in years, when he held the seals, as chancellor, that he often dosed over his causes when upon the bench ; a circumstance which I myself well remember was the case; but it was no prejudice to the suitors; for Sir Philip Yorke and Mr. Talbot were both men of such good principles and strict integrity, and had always so good an understanding with one another, that although they were frequently and almost always concerned for opposite parties in the same cause, yet the merits of the cause were no sooner fully stated to the court but they were sensible on which side the right lay ; and accordingly the one or the other of those two great men took occasion to state the matter briefly to his lordship, and instruct the Register in what manner to minute the heads of the decree."† This equitable mode of deciding Chancery suits was probably not very satisfactory to the suitors, and fully accounts for the number of appeals and reversals. Lord King's disease increasing he resigned the seals 26th November, 1733, and died on the 22nd of July following. His monument, in a country church yard in Surrey, records, that he sunk " under the labour and fatigues of this weighty place."

* Biographia Britannica. Art. *King*. vol. iv. p. 2863.

† Cooksey's Character of Lord Somers, p 60.

In 1730 an act was passed to terminate certain disputes on the orders and decrees of the Masters of the Rolls, and to confirm their jurisdiction, but subject to appeal to the Lord Chancellor.*

A petition of the magistracy of the north Riding of the county of York, dated 12 January, 1730, and presented to the house of Commons,† represented the evils of the old law language being retained in legal process and proceedings, and petitioned for the substitution of the native tongue. In this probably originated the "Act that all proceedings in courts of justice shall be in the English language,"‡ that the common people, as the preamble recites, may know and understand what is alledged to be done for and against them in the process and pleadings, the judgments and entries in a cause. By a subsequent statute some restriction was enacted in regard to the court of Exchequer, which was allowed to continue its barbarisms.§ That abolition therefore of the technical law latin and gothic black letter which the legislators of the commonwealth had accomplished *instantly* and completely, was only tardily and partially adopted in the reign of George II.! The comparison may be odious, but is striking.||

In the successive sessions of parliament, 1729 to 1733, the House of Commons was occupied in obtaining returns of all the fees and emoluments of the courts of justice, and examining their origin and reasonableness.§ All these returns were referred to a committee,

* Stat. 3 Geo. III. c. 30. Comm. Journ. vol. xxi. p. 563.

† Ibid. p. 632.

‡ Stat. 4 Geo. III. c. 26.

¶ 6 Geo. II. c. 6.

|| The above Statutes were debated in the House of Lords, and with difficulty surmounted the ancient prejudices of that House in favour of obscurity and law-craft. Lords' Journals, vol. xx. 3 May.

§ See Comm. Journ. vol. xxi. Index, art. *Fees*.

and as the enquiry was the first complete exposé of the growing and extraordinary cost of law, and contains much information, valuable and interesting at this moment, it is fully extracted from the Journals notwithstanding its length and detail;—

“ Mr. Wyndham reported from the Committee, to whom the several lists of the officers, and their deputies belonging to the several Courts in Westminster Hall, and elsewhere, with the lists, accounts, and tables of fees, claimed by them, which were presented to this House in the last and present session of Parliament, and also the lists, accounts, and tables of fees of the officers, and servants, belonging to the Judges of the several Courts in Westminster Hall, and the circuits, the associates, and clerks of Assize presented to this House, in the session of Parliament preceding the last, were referred, the matter as it appeared to them, with the resolutions of the Committee thereupon, which they had directed him to report to the House: And he read the report in his place, and afterwards delivered it in at the Clerk’s table; where the same was read, and the report and resolutions are as follow;—viz.

“ The Committee, taking into consideration the great number of officers, and clerks who have presented to this House lists of fees, thought it necessary to examine into the fees of the officers of each court separately, and to begin with the Court of Chancery, which is a court always open, and which exercises the most extensive jurisdiction, and abounds with clerks and officers.

“ The committee enquired, of what officers the Court of Chancery did anciently consist, and what regulation of their fees had been made, and what methods used to prevent the increase of unnecessary officers, and the exaction of illegal fees.

“ It appeared to the Committee that commissions to enquire into the behaviour of officers in Courts of Justice, ecclesias-

tical and civil, were frequently issued in former times to several great officers of the kingdom, and others, with power to correct abuses, and with direction to certify their proceedings either to the King in Council, or into the Court of Chancery.

“ The inrollment of two such commissions in the reign of James the First, and of four in the reign of Charles the First were produced to the Committee, from the records in the Chapel of the Rolls; but no such commission has issued since the restoration of Charles the Second.

“ Another method of reforming abuses in the Courts of Justice was, by the presentment of experienced practisers, upon oath, appointed by the Judges of the several Courts to enquire, what fees had been exacted, other than the antient and usual fees.

“ A presentment upon oath of fifteen persons, in the fortieth of Elizabeth, for the better reformation of sundry exactions and abuses, supposed to be committed by officers, clerks, and ministers in the High Court of Chancery, was shewed to the Committee; by which presentment it plainly appeared, who were the officers of the Court at that time, and what were their legal fees.

“ But, *as the Officers of the Court of Chancery are exceedingly increased since that time by patents and grants*, and many secretaries, and clerks, and other *honorary attendants* upon the Judges of that Court appear now to claim large fees, whose services were unknown to the antient practisers in the fortieth of Elizabeth, the committee thought it proper to make a list of such offices as appear to be antient and necessary to the justice of the court, and a list of such as have since grown up insensibly into offices of great profit, and much increased the expence of the proceedings of the Court; which lists are hereunto annexed, Appendix, No. 1 and 2. By the presentment of fees in the fortieth of Elizabeth, and by the list of fees, lately presented to this House, it appears

that many fees of several antient officers, then allowed, continue the same to this time; particularly of the examiners, the cursitors, the clerk of the subpoena's, the clerk of the chapel of the rolls, the clerks of the petty bag, the six clerks, and others; which the Committee think very observable, and consider as the effect of a good regulation, once established, which has been able to preserve itself for above one hundred and thirty years against the incroachments of officers on all sides in the same Court.

“ The abolition of the Court of Star Chamber, and of the Court of Wards and Liveries, together with all the writs and proceedings of those Courts, has extinguished some offices, and reduced the profit of some antient officers of the Court of Chancery; and the alteration which time has introduced into the practice of the Court, has greatly raised the profits of other officers, who are concerned in the proceedings in Equity, by the multiplying of petitions, bills, answers, pleadings, examinations, decrees, and other forms, and copies of them, *and extending them frequently to an unnecessary length.*

“ It appeared to the committee that the charge of drawing and entering an order in the court of Chancery antiently *was* but one or two shillings, and never exceeded three shillings, until the time, that the office of Register was erected, and a grant made of it, and that all orders, dismissions, and decrees, were endorsed upon the pleadings. The fee of three shillings and sixpence for each side in all causes, and of seven shillings a side in causes by consent, now claimed by the register and his deputies, appear to the committee to be a heavy burthen upon the client, especially, considering the long recitals in decrees and orders of late times, which the deputy registers did acknowledge to consist frequently of twenty, thirty, forty, or more sides, and considering that other forms in the same court are charged eight pence, or at most twelve pence, a side. The charge of eight pence a side

for copies, received by the masters and by the six clerks, is an antient fee, where copies are necessary, but the committee were informed, that copies are frequently forced upon the client, contrary to his desire, and claimed by officers as due to them, or charged by solicitors, though neither claimed, or paid; *which considering the prodigious length of some forms, and that the whole proceedings in causes consist often of several thousand sheets is a grievous abuse, that ought to be reformed.* The masters in Chancery claim two shillings for every summons, which the committee admit to be reasonable; but are informed, that abuses have been often committed by a great number of summons issuing, without any attendance of the clerks, or solicitors, who nevertheless may charge their clients for such summons, and their attendance, because few bills are regularly taxed before the masters, which Mr. Holford and Mr. Elde, masters in Chancery, did affirm to be a principal occasion of the increase of expence in causes, the solicitors generally taking upon themselves to tax one anothers bills, and making what allowances they think fit.

“ The committee apprehend that the fees of the secretaries, clerks, and other officers, who do not appear to have been known formerly to the court, have never undergone any public examination; that many different offices render the business of the court very inconvenient to the suitor, and greatly encourage the demand of new fees. *

“ It appeared to the committee, that orders had sometimes been made, for the officers to hang up publicly lists of their fees; most of which lists are since withdrawn or have been suffered to decay, and become so useless that the officers themselves seemed often doubtful what fees to claim, and most of them relied upon no better evidence, than some information from their predecessors, or the deputies of their predecessors, that such fees had been demanded, and received.

“ Among the various claims of those who now call themselves officers of the court of Chancery, none appeared more

extraordinary to the committee, than the fee of the secretary and clerk of the briefs; who upon grants, to enable persons to beg and collect alms, claim, and frequently receive, a fee of forty, fifty, or sixty pounds; and the register takes besides twelve or thirteen pounds, for stamping and telling the briefs; which fees, with other great charges upon the collection, devour three parts in four of what is given for the relief of persons, reduced to extreme poverty by fire or other accidents.

“ The clerk of the lunatics and idiots informed the committee, that he had never seen any account of his fees, till lately; he believes, not till a list of them was ordered to be laid before this house. That Mr. Lewis, who had been his deputy in his office for 34 years, had constantly refused to shew any list to Mr. Bennet his predecessor; and that he had no other rule in the demand of his fees, for three or four years, but receipts and loose papers which he found in his office; but that the fees, which he took, appear to agree exactly with the fees contained in the list, which he has so lately discovered.

“ Such were the accounts of fees, which the officers gave the Committee; who took into consideration the great difficulty they had even to discover, of what officers, clerks, and ministers, the Court of Chancery does at present consist, or in what terms to describe their offices and employments, so as to make them discover themselves; and observing how little able, or willing, many Officers were to give any satisfactory account of the fees they claim and receive, came to the following resolutions.

“ Resolved—That it is the opinion of this Committee, that the long disuse of public enquiries into the behaviour of the officers, clerks, and ministers of the courts of justice has been an occasion of the increase of unnecessary officers, and given encouragement to the taking illegal fees.

“ Resolved—That it is the opinion of this committee, that the interest which a great number of officers and clerks have in the proceedings in the court of Chancery, has been a principal cause of extending bills, answers, pleadings, examinations, and other forms, and copies of them, to an unnecessary length, to the great delay of justice, and the oppression of the subject.

*“ Resolved—That it is the opinion of this Committee, that a table of all the officers, ministers, and clerks, and of their fees in the court of Chancery, should be fixed and established by authority; which table should be registered in a book in the said court, to be at all times inspected gratis, and a copy of it signed and attested by the Judges of the court, should be returned to each House of Parliament to remain among the records.”**

The Parliamentary Histories contain no report of the debates or proceedings on these important enquiries. But by a resolution on the journals of the Commons, the house resolved “ that an humble address be presented to his majesty, that he will be graciously pleased to give directions, that a survey be taken of the officers, clerks, and ministers, of the courts of justice in this kingdom, and that an enquiry be made into their fees in order to reform the same, as to such as have been imposed upon the subject contrary to right, and to establish what are reasonable, and legal, in such manner as his majesty in his great wisdom shall think fit. *Ordered*, That the said address be presented to his majesty by such members of this house as are of his majesty’s most honorable privy council.”†

On the 21st April, the King’s answer was reported to the above address, that he would give immediate direc-

* Comm. Journ. vol. xxi. p. 892. 18th April, 1732.—Cobbett’s Parl. Hist. vol. viii. p. 1071.

† Comm Journ. vol. xxi. p. 894.

tions for “a survey to be taken of the officers, clerks, and ministers of the courts of justice, and that an enquiry be made into their fees, in order to reform the same, as to such as have been imposed upon the subject contrary to right, and to establish what is reasonable and legal.”* It is again to be regretted that the debates and proceedings of the past and present Parliaments have not hitherto been *officially* reported and published, as much invaluable information and discussion is entirely lost to the nation and posterity.† A slight variation from the chronological order of the present history is here necessary, to notice that the result of the address was a Commission to make a survey of the different courts in England, Wales, and Berwick upon Tweed. That portion of the Commissioners’ report relating to the court of Chancery is most important. It comprises one-hundred folio pages. After reciting the nature of their delegation and powers, they report in detail the duties, salaries and emoluments of every officer of the Equity courts. The close of their report on the remedial propositions is too valuable to be passed over, and is now quoted verbatim. The names and signatures of the commissioners appended, confer additional authority on the suggestions of the report:—

* Comm. Journ. vol. xxi. p. 897.

† The partial publication of the debates, was, as is well known, formerly strictly prohibited; and the succeeding resolution on the Journals of the House of Commons on Mr. Wyndham’s report, orders “that the said report with the appendix thereunto, and the proceedings of the house thereupon, be printed; and that Mr. Speaker do appoint the printing thereof; and that no person, but such as he shall appoint, do presume to print the same.” The dispatch and accuracy of the Parliamentary Reports in the daily journals, as also the useful publications of Parliamentary Committees, are too highly appreciated by the country to require any laudatory comments in these pages, but it is obvious that much valuable interlocutory debate still passes unrecorded.

“ And pursuant to the direction of the Commission, to propose by what just honourable ways and means the abuses may be reformed, and what remedies may be applied thereto, the sub-commissioners have laid before us several proposals, in order to the making regulations as follow :

“ That the fees left doubtful by the presentments of the Juries be settled and fixed ; and when that is done,

“ That such Fees as on this Inquiry shall be found lawful and reasonable be established ; such as are illegal abolished ; and if any fees shall be found exorbitant or higher than is reasonable with regard to the service performed, and the qualifications to be required in the officers, those fees though ancient, to be reduced within due bounds for the ease of the subjects, after the determination of the interests of the present officers, or due satisfaction made to them :

“ That for preventing the increase of fees, and the exactions of officers for the future, the Court and those who preside therein, will be pleased to take the most effectual care, by such methods as they shall think most proper, to confine all the officers to the fees to be established, and to hinder the increase of them under any pretence whatsoever ; and in order thereunto to make such inquiries from time to time into the observance of the regulations which shall be established on this occasion with respect to fees, and to give such direction therein as shall be necessary :

“ That it is they humbly conceive, most necessary for the effectual preventing the increase of fees, to establish an expeditious and easy method, with as little expence as may be, whereby the Suitors and others may obtain justice against such officers who demand or shall take more or higher fees than shall be allowed :

“ And that in order thereunto, all Suitors, their Solicitors and Agents, may have liberty to apply at any time to any one of the Masters of the Court, and to take out a Sum-

mons from him (for which one shilling only shall be paid) against any officer who shall demand or take undue fees and to serve the same upon him, and on hearing the officer, or *ex parte* in default of the officers' attendance, and due proof of the service of the Summons be determined by the Master what fee is due, and the officer be obliged to accept thereof, if not paid before, or to refund if he or his Deputy or Clerk had taken what is not his due, or more than is his due; and also to make such reparation and pay such costs to the parties complaining if the officer be in the wrong, as the Master shall think fit to order, for which the Master to be paid by the party who shall be found in the wrong the sum of two shillings and no more, unless the fee or fees complained of amount to more than ten shillings, and then the Master to have four shillings for his trouble, but with liberty to either party to appeal to the Court by motion or otherwise against any determination of the Master's: but if the fee complained of be demanded or taken by any of the Masters of the Court they humbly submit, whether application ought not to be made to the Court and that it is to be hoped that this may prove a good method to prevent the increase of fees. The present method, by indicting the officers for extortion, being found by long experience to be wholly ineffectual in regard of the trouble and expence and loss of time attending such a prosecution to which the fee claimed bears no proportion, and is therefore submitted to as the less evil, and so in time becomes a usual, if not a lawful fee; this method will also take away the necessity the Suitor may otherwise be under to comply with the fees demanded though unjust to prevent the delay of his suit, which very much depend on the dispatch of the officers.

“ That if any Solicitor charge more or higher fees than shall be established, such fees, or the excess of them, as the case happens, shall not be allowed in his Bill, nor shall the

Solicitor have any remedy against his client for the same, either in law or equity :

“ That all officers their deputies and clerks be obliged to give notes under their hands of the fees demanded or taken by them if required :

“ That every Master of the Court do keep a book or table of the fees of all the officers when established :

“ That a list or lists of fees belonging to all the officers of the Court, when established, be signed by the Lord High Chancellor, Lord Keeper or Commissioners of the great seal, and by his Honour the Master of the Rolls, and be entered on record and kept among the rolls and records of the said Court :

“ That a list of all those fees when established be also printed, that all officers and others concerned may furnish themselves therewith ; which may also be the means of preserving them to future ages, and of making any future inquiry of this kind far less difficult than the present :

“ That a list or table of the fees of every office be hung up therein, in some conspicuous place, where it may be most easily seen ; and that there be also kept in each office a book, fairly written or printed, to contain all the fees belonging to that office, according to the establishment of the same : such book to be signed by the principal officer or officers, and always lie open for the inspection of the suitors and others concerned :

“ That no expedition money be demanded or taken on any pretence whatsoever ; but that every officer be obliged, either by himself or by a sufficient number of clerks to be kept by him, to dispatch the duty and service of his office in due time, for the established fees without further expectation or reward :

“ That no office belonging the court, or concerning the administration of justice therein, be for the future allowed to be bought or sold ; the sale of offices being as they appre-

headed, one of the principal causes of the increase of fees; the purchasers generally finding themselves under the strongest temptations, by all ways and means to increase their profits (which must be at the expence of the suitors) in order to make their offices worth the money they pay for them; and where the offices are held for life only or other uncertain estates the temptation is still the stronger, as the hazard is greater :

“ That the execution of these offices by deputies may be also prevented as far as is practicable :

“ That the number of offices or officers be not permitted to increase, in regard the splitting and multiplying of them may probably tend to the increase of the fees, besides other inconveniencies to the Suitors in rendering the business of the Court more difficult and troublesome :

“ That proper penalties be added when necessary, to enforce the observance of these regulations. And they further observed in the course of their inquiry, it had appeared to them, that a great part of the expence of the Suitors in many offices arose from the copies of proceedings; the bills, answers, interrogatories, depositions, orders and decrees being often very long, and the copies of them, (which are necessary to be taken out by the complainant or defendant, and sometimes by both) having but six words in a line and fifteen lines in a sheet, the expence of taking out such copies amount in the course of a suit to a very great sum of money. How this great expence to the Suitors may be lessened,—whether by reducing the length of such proceedings, by leaving out the immaterial and unnecessary parts of them, or by inserting more words in a line or more lines in a sheet, for which there is more than sufficient room in every sheet, or by reducing the fee usually taken for such copies, or by what other ways or means, they humbly submit to the consideration of those who may be better able to judge, and who have authority to provide suitable expedients and remedies,

and to establish proper regulations, whereby justice may be administered to your Majesty's subjects with as much dispatch and as little expence as conveniently may be :

“ We having taken the proposals above mentioned into our consideration, beg leave to observe to your Majesty, that as to several of the matters therein contained and which come within our commission, we have in the course of the proceedings, given our opinion thereon, and made such regulations as we apprehended ourselves to be warranted to do.

“ And as to the residue of the matters therein proposed, we think they well deserve to be considered, and that many parts thereof may be very beneficial to the Suitors; but divers of them appear to us to be of such a nature as can be only effectually established by the authority of parliament.

“ Having thus gone through the several presentments of the jury and reports of the sub-commissioners, as to the Court of Chancery, and completed the inquiry directed to be made as to that Court, so far as we have been enabled to do;

“ We humbly submit the same to your Majesty's royal consideration.

WILL. YONGE,

J. WILLES

JOH. AUDLEY

J. COMYNS

MAT. LANT

HARDWICKE, C.

J. BETTESWORTH

WILMINGTON, P.

H. PENRICE

WARWICK

W. LEE

AR. ONSLOW

J. VERNEY

“ Dated the 8th day of November, 1740.”

By the insertion of this report, which although dated in 1740 has reference to the state of the court immediately subsequent to the issuing of the commission in

1733, a period of ten years has been apparently, but not really anticipated. The report though promulgated in the chancellorship of Lord Hardwicke was made from the enquiries of previous years, when Mr. Yorke, though he might anticipate, did not enjoy the possession of the seals.

A few immaterial additions were made to the orders of the court by the Lords Commissioners and Lord King,* and an order of the date of 4th November, 1725, provided for the proper investment of the property of the suitors in the Bank of England.† The journals of the two houses of Parliament and the Parliamentary Histories afford no information of any measures for the further improvement of the law.

In 1733, on the resignation of Lord King, Mr. Charles Talbot, the solicitor general, was made chancellor, with the title of Baron. Smollett, who seldom rises above a dry and uninteresting narrative of political facts, characterises Lord Talbot as possessing “the spirit of a Roman Senator, the elegance of an Atticus, and the integrity of a Cato;”‡ and more public or private integrity was never so generally awarded to an English lawyer. His dispatch of business, the logical principles of his decisions, and the general satisfaction of the suitors at a period when the litigation of the court had greatly increased, formed a new era in the administration of equity. The superiority of his professional knowledge and accomplishments, and his uncompromising

* Beames, p. 337.

† Ibid. and see Statutes, 12 Geo. II. c. 24; 23 Geo. II. c. 29; 4 Geo. III. c. 32; 5 Geo. III. c. 28; 9 Geo. III. c. 19; 14 Geo. III. c. 43; 15 Geo. III. c. 22. and 56; 32 Geo. III. c. 42; 37 Geo. III. c. 135; 44 Geo. III. c. 82; and 46 Geo. III. c. 129.

‡ Smollett's History, vol. iii.

honesty, induced a general expectation that this really great man would have ultimately effected a thorough reformation of the court; but a sudden illness terminated his earthly career, in the zenith of his fame and usefulness and in the prime of life, on the 14th of February, 1736. The constant fatigue of his official employments is recorded as the cause of his death, and he was said to have fallen "a martyr to the public good."*

On February 21st, 1736, Philip Yorke, Lord Hardwicke, succeeded to the chancellorship. It has been so general and fashionable a custom extravagantly to laud the character of this distinguished lawyer, that there is little temptation to risk the faith of the reader of these pages, by examining into the claims to such indiscriminating praise. But if it be once recollected that Lord Hardwicke was an active and ruling *politician* in the times of Bubb Dodington, no one conversant with English history can expect to discover in the chancellor an unexceptionable public or private character. Lord Chesterfield, his most immodest eulogist, admits that Lord Hardwicke "valued himself more upon being a great minister of state, which he certainly was not, than upon being a great chancellor, which he certainly was." This eminent lawyer was the son of an attorney at Dover, and originally articled to his father's law-agent in London. He was indebted, not merely to his talents, but also to circumstances, in an accidental introduction to Lord Macclesfield, through whose patronage he was called to the bar, and obtained the crown appointment of solicitor general at the age of twenty-nine. His natural sagacity very soon discovered that the Duke

* The Honour of the Seals; or Memoires of the noble family of Talbot, 1737.

of Newcastle and Walpole's connection was the step ladder to legal preferment: he accordingly enlisted under the political banners of those ministers, and soon mounted to the bench.

In Horace Walpole's (Lord Orford) "*Memoires of the last ten years of the reign of George the second,*" there is a curious account of the politics and intrigues by which Sir Philip Yorke, Lord Hardwicke, succeeded to the Chancellorship. Walpole's personal resentment against this distinguished lawyer doubtless very much weakens the credibility of the narrative, but it cannot be doubted that the office of Chancellor was as usual scrambled for by the great factions and "families." An amusing anecdote is told, that Sir Robert Walpole finding it difficult to prevail on Yorke to quit a place for life (the Chief Justiceship of the King's Bench) for the higher but more precarious dignity of Chancellor, worked upon his jealousy, by informing him, that if he persisted in refusing the seals, he must offer them to Fazakerley. "Fazakerley!" exclaimed Yorke, "impossible! he is certainly a Tory, perhaps a Jacobite." "It is all very true," replied Sir Robert, taking out his watch, "but if by one o'clock you do not accept my offer, Fazakerley by two becomes lord keeper of the great seal, and one of the stoutest Whigs in all England." Yorke took the seals and the peerage.* The official aptitude of the officer for the office appears to have been a secondary consideration in all the politico-judicial appointments of these caballing parties.

A volume would not suffice to detail the political events during the long chancellorship of Lord Hardwicke, and the personal influence which he exercised over the

* *Memoires*, vol. i. p. 138.

councils of the cabinet. The whole reign of George II. was one series of political intrigue and venality, in which *borough influence* introduced such men as Dodington to rank and importance.

On the resignation of the Duke of Newcastle, Lord Hardwicke relinquished the seals. Great endeavours were used to attach him to the new administration: Lord Orford concisely writes that "*fatigue* determined the scale with Lord Hardwicke, which power and profit would have kept suspended."*

In June, 1757, we find Lord Hardwicke busied in compounding a new ministry, and pressed by the King to form one, in consideration of the state of affairs, "that might not be changed again in five months." It appears in all these removals to have been part of the English "Constitution" that the presiding officer of the court of Chancery should retire, without any reference to the interests of the suitors in Equity, or the extreme evils attendant on frequent variations in the administration of so important an office. Henley, afterwards Lord Northampton, was the fortunate person appointed. Lord Orford's account of the motives of selection is too illustrative of the principle of judicial appointments to be omitted. "The seals had been offered to Murray, "and to the master of the rolls, who refused them, and "to Willes, who proposed to be bribed by a peerage to "be at the head of his profession; but could not obtain "it. Henley, however, who saw it was the mode of the "times to be paid by one favour for receiving another, "demanded a tellership of the exchequer for his son, "which was granted, with a pension of £1,500. a year "till it should drop; and as if heaping rewards upon

* Ibid. vol. ii. p. 106.

“ him would disguise his slender pretensions, *Lord Hardwicke told him he must be Speaker of the house of Lords too, for Westminster Hall would never forgive him (Lord Hardwicke) if he suffered these offices to be disjoined.* Sandys* and his son were both laid aside. Hardwicke himself took no employment; the seals, which it was plain from his not resuming them, he had not resigned from mere friendship to Newcastle, were too great a fatigue; and no other of the great offices was vacant.”† ‡

The corruption of these times is every where apparent. Money, as an instrument of bad government, took the place of feudal usurpation. It appears that the Duke of Newcastle, as a bonus to the Judges for their complaisant opinions on the Habeas Corpus Act, had promised to introduce a bill for the increase of their salaries, and to convert their commissions during good behaviour into patents for life. Pitt is reported to have told Newcastle, that the increase for the occasion, *was the largest fee that ever was given.* The Duke abandoned the intended motion for perpetuating their commissions. The additional salary, though stoutly opposed, (on account of the imputed corruptness of the Judges, a particular reason by the bye, why they should be placed *above* corruption), was carried by a majority of 169 to 39,

* When the seal was in commission, Lord Sandys was made Speaker of the House of Lords.

† Memoires, vol. ii. p. 226.

‡ “ Public matters have been, and are still, too undecypherable for me to understand, consequently to relate. Fox out of place, taking the lead in the House of Commons, Pitt, Secretary of State, declares that he is no minister, and has no ministerial influence. The Duke of Newcastle and Lord Hardwicke lie by and declare themselves for neither party.”—Lord Chesterfield’s Letter to Mr. Dayrolles, February, 1757.

which occasioned Charles Townsend to say, *that the book of Judges had been saved by the book of Numbers.**

Of the *judicial* character of Lord Hardwicke it is incumbent to speak with caution and diffidence. It is almost invariably praised by his profession in the citation of cases and decisions, and it is indisputable that his judgments were *secundum artem* well founded and good precedents for future determinations. But it must be recollected that he took part in the solemn enquiry, and signed the Report of 1740; and that during the twenty years in which he presided over the court of Chancery, the abuses of which were so unsparingly exposed and denounced in that report, he never introduced even so much as one legislative measure for their removal or the improvement of his jurisdiction! He certainly framed

* The witty and dissipated Duke of Wharton, in the following verses, gives a curious description of the moral character of the high judicial officers of his times:—

“ When York† to heaven shall lift one solemn eye,
And love his wife above adultery;
When godliness to gain shall be preferr’d
By more than one of the right reverend herd;
When Parker shall pronounce one right decree,
And Hungerford refuse his double fee;
When Pratt with justice shall dispense the laws,
And King impartially decide a cause;
When Tracey’s generous soul shall swell with pride,
And Eyre his haughtiness shall lay aside;
When honest Price shall trim and truckle under,
And Powis sum a cause without a blunder;
When Page one uncorrupted finger shows,
And Fortescue deserves another nose;
Then shall I cease my charmer to adore,
And think of love and politics no more.”

† Blackburne, Archbishop of York.

and published an order, dated 17th November, 1743,* *reciting* that commission and report of enquiry, and regulating the fees of the officers of the court, who were directed to hang up in their respective offices tables of their charges, legibly written, and also directing a few trifling amendments in the practice, "*until some further or other regulations or provisions shall be lawfully made,*" but none other were forthcoming in his chancellorship: no measures for a subdivision of the jurisdiction; none to limit the general delay of justice through every department of the procedure. It is admitted that during his long judicial presidency, only three of his decrees were appealed from, and those afterwards confirmed by the Lords. But who presided in the Lords? *Lord Hardwicke*, whose political influence and legal reputation ruled over the few lords spiritual and temporal, who bethought of the interests of the Chancery suitors. A letter on the character of Lord Hardwicke, inserted in Cooksey's Sketches, has been reflected on for its severe strictures, at variance with most other biographical accounts; but the remarks however severe are not unfounded or without authority. It is now well known that Lord Hardwicke's jealousy and intrigue prevented law peerages being given to the contemporary judges Lea, Ryder, Willes and Parker, by which he secured to himself all the judicial influence in the house of Lords. The author of the letter alluded to writes,

* "An Order of the High Court of Chancery made by the Right Honorable Philip Lord Hardwicke, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honorable William Fortescue, Esq. Master of the Rolls, relating to the fees of the Officers, Clerks and Ministers of the said Court, and other regulations for the benefit of the suitors thereof, to which are added three other General Orders of the said Court. London, 1744." 12mo.

“ thus he remained the sole law lord during the whole
 “ time of his chancellorship, which makes a great draw-
 “ back from the panegyric of his flatterers, that no
 “ decree of his was ever appealed from. It was evident
 “ that to appeal from a decree of Lord Hardwicke to
 “ the house of Lords, was an appeal to himself. Indeed
 “ his practice in the court of Chancery, for which he is
 “ applauded as having introduced a regular system, was
 “ such as precluded all pretences for appeals or com-
 “ plaint. His decrees were very few, in comparison to
 “ the many causes that came under discussion in that
 “ court, in his time. The hearings, re-hearings, refer-
 “ ences to masters, reports and exceptions to these
 “ reports, exorbitant fees to counsel, and the length of
 “ time to which every cause was protracted, made the
 “ suitor weary, and glad to submit to any decree sug-
 “ gested and agreed upon by their counsel, in which
 “ neither party could complain of being aggrieved by
 “ the judge of the court.”* Lord Hardwicke’s con-
 duct in a family suit of his own exposed him to severe
 and merited censure. These reflections are also cor-
 roborated by various contemporary publications which
 animadverted in strong terms on the state of the
 Chancery court: thus although Lord Hardwicke was
 so generally a favourite with the *lawyers*, he was
 clearly less esteemed by the *suitors*; and it must be
 allowed that the latter were more acute and interested
 judges of his official deserts than the former.

In 1750 an ingenious and spirited publication ap-

* Copy of a Letter from a gentleman of the law to Mr. Richard Cooksey,
 on the Life and Character of Lord Hardwicke, p. 76. Inserted also in the
 Annual Register, 1791, p. 279. The writer says his letter is the “ recol-
 lection of an old man of the law who knew him well.”

peared against the abuses of Chancery,* from the pen of an author, who, in his preface, states that he "was not bred to law:" some bitter experience and observation, however, had given him a good insight into Equity litigation, the evils of which he declares "intolerable." This writer asserts that the costs of litigating all sums under *five hundred pounds* is greater than the sums sued for or defended. The "longest purse bearer" he pronounces the successful party, be he plaintiff or defendant, but that though successful he commonly "sits down worse than he began." "The high Court of Chancery (which should dispense Justice, where the Law hath made no provision, as well as both, when they operate together) is incontestably the most dilatory, as well as the most expensive: An oppression which many of his majesty's good subjects have long laboured under, and universally complained of; inso-much, that the interrogatory Proverb hath not been more jocularly than pertinently proposed, to such, who with more precipitation than precaution, resolved to engage in Chancery Suits. '*Will you be hung up six or eight years in Chancery?*' implying, that his cause may so long depend there, until his purse and patience are exhausted, his health impaired, and his person (by vexation) emaciated, like a skeleton in the study of a Physician, or an anatomy in the office of a Surgeon: for the delay of justice is said to be the

* "Animadversions upon the present Laws of England; or an Essay to render them more useful and less expensive to all his Majesty's Subjects. To which is added a Proposal for regulating the practice, and reducing the number of Attornies, Solicitors, &c. with a Supplement humbly submitted to the serious consideration of both Houses of Parliament. London, 1750." 8vo. pp. 68.

“denial thereof, since what is not done in due time is
“not done,”—

Justitiæ procrastinatio, ejusdem fiat abnegatio.

Many suits are stated to have endured upwards of half a century, “the lawyers tossing the ball to the hands of each other.” The author asserts these nuisances to originate in the excessive length of Bills and Answers, and their frequent tautologies: the unreasonable exceptions and unnecessary objections made by Masters in Chancery against the sufficiency of answers: the evasive and expensive delays contrived and practised in liquidating and adjusting accounts before the Masters: the grievous delay and expence incurred by Bills of Revival after the death of one Party: the repeated postponement and procrastination of the hearings. And when a Decree is obtained the animadvertor asserts that the Solicitors to make long harvests for themselves, and leave small gleanings for their Clients, delay the Decretal order for the costs, &c. “These instances of grievance, being probations of the patience of a *Job*, and “the purse of a *Cræsus*, are flagrant, and yet but few “amongst the many oppressions of that Court, which “for important reasons are not now recited; and come “so amply attested by the experience of the equitable “Suitors, and of those who by litigious persons are “unjustly sued, that no Rhetorick is needful to explode “them, nor to expatiate upon the necessity of redressing “them.”—p. 11. It is estimated, that at this period the Lawyer’s Tribe consisted of one hundred thousand persons, sharing an annual plunder of two millions sterling: it is then calculated, in the spirit of political economy, how much the national wealth would be increased by the

change of the law-craft to honest pursuits. This spirited pamphleteer says, that "dipping into our Law proceedings is equal to plunging into a labyrinth, out of which the adventurer can't count the time, the treasure, nor the perplexity it will cost to extricate him; neither the consequences after all, being at best like gaming at hazard, proceeding from some laws being perverted by the Professors."—p. 42.

The sagacious writer, in considering the remedy of these great national evils, expresses his conviction that the necessary legal amendments and reform of the law and judicature must, in a great degree, depend on the practical lawyers, whose knowledge and aid would be absolutely necessary to accomplish the object: and as their *interest* is to keep "things as they are," he proposes that large parliamentary grants (**** thousand pounds) should be offered for the best plans of judicial reform; and he then proceeds to detail the plans for specifying the objects wanted and the mode of adjudging the premium to the successful tenders. A supplement contains "Sundry Propositions for the amendment of the Law; for preventing of vexatious suits; and preservation of peace amongst his Majesty's subjects;" but they are by no means adequate to the end in view, and chiefly consist of a proposition and particulars of referring litigation to local *Justices*—a plan which the reader will, however, consider as by no means likely to accomplish its purpose.

In the following year Fitzsimmonds, a barrister, published some remarks on the English Laws,* which plainly

* "Free and candid Disquisitions on the nature and execution of the Laws of England both in civil and criminal affairs, &c. by Edward Fitzsimmonds, Esq. Barrister at Law, London, 1751." 8vo. pp 58.

though moderately notice the abuses of the equity jurisdiction. After reflections on the common law courts and practice, he proceeds—" I have purposely hitherto omitted taking notice of the courts of equity, and shall now only humbly recommend it to the consideration of those worthy judges, who preside in those courts, whether the proceedings there are not much too dilatory and expensive, and whether those inconveniences might not be remedied by shortening the pleadings, limiting the fees of the counsel at hearings, determining in court many matters which are now referred to the masters, obliging the practisers in the court to take out a warrant on a reference, within a limited time after the order of reference, and to attend on the first warrant; and also by dismissing on the last day of every term every bill on which no proceedings had been within that term; and as the value of money, as well as the charges at law, are greatly altered since the time of *Henry* the VIIth, when the act relating to paupers was made, and as the common costs of carrying on a suit in Chancery to a hearing amount to at least 20 pounds, does it not seem most agreeable to common sense, that he should be deemed a pauper who is not worth that sum; for a man may be now worth five pounds and not able to carry on a suit in Chancery.—As the proceedings in the court of equity must necessarily be always so chargeable, as not to make it worth while to proceed therein for a small sum, and as equitable demands, especially legacies, are often small, I would recommend it to the consideration of the legislature, whether it would not be expedient and beneficial to the nation, to establish an inferior court of equity, for all demands under £100, the manner and

"costs of the proceedings in which, might bear a proper proportion to the demand."—p. 35.

An intelligent writer about the same period exposes the defective state of this court.* "Another reason, that makes the law *tedious* and *expensive* is, the distinction of courts in opposition to *law* and *equity*, which are the fruits of many suits: a court of *law* will tell you, that it is a matter of *equity* rather than *law*; and that such court has not *cognizance* of this or that: a court of equity will *oftentimes* direct an issue at the *common law*, alledging, that the matter is not cognizable before them; and that after the issue is tried, the parties must resort back again to equity for further direction: would it not be much more easy to the suitor, that the judge or judges of such court of law or equity, should always have liberty in such cases to ask to their *assistance* a judge of the other court, and so determine the matter at once whether it was *law* or *equity*, and the same ended or determined in the court where the cause began? This would still be an ease to the subject, and an end at once made of the suit."—p. 46.

In his subsequent pages this author notices more minutely and technically the unnecessary expence and delay in various offices of the Six Clerks, Registrars and Masters: "I should have said something about the report office, and the great sums paid there for filing them, and the tediousness of exceptions thereto, and

* "The present state of the Practice and Practisers of the Law, wherein is shewn the obscurity, uncertainty, and expensiveness thereof; with some methods humbly proposed for remedying the same. By an Impartial Hand, London." 8vo. pp. 64.—In a copy of the second edition, of this volume I have seen a manuscript insertion of the author's name, "Davis in Chancery Lane."

" the expensiveness of hearing them ; and perhaps after
 " all, the matter must go back again to the master to
 " rectify : so that it is an idle question for clients to ask
 " when their business will be done, or at what expence ;
 " a man may guess at the time within a year, or perhaps
 " within a hundred pounds what it will cost to go
 " through it, *so expensive and tedious is law*. If orders
 " and decrees in the court of chancery were but drawn
 " up in that concise form as they are in the court of Ex-
 " chequer, very little more than the ordering part being
 " therein mentioned, and reports contracted, justice
 " may be obtained at a much cheaper and expeditious
 " manner."—p. 53.

Sufficient has now been cited to prove that the evils of the equity system existed under Lord Hardwicke's administration, and were equally the subject of public inquiry and complaint.* Numerous other publications might

* In the following case, originating in the Chancellorship of Lord Hardwicke—*Lloyd versus Jones—Vesey's Reports*, vol ix. p. 37, the reader may see an example of complicated and interminable litigation—Bills, Amended Bills, Supplemental Revivor, and all sorts of Equity conundrums. The first sentence in Lord Eldon's dicta there recorded is striking,—"*It is extremely difficult to collect the facts in a Cause as old as this ; and there is great danger of miscarrying in saying now, what Decree ought to have been made in 1751.*" p. 52. His Lordship subsequently says in the same opinion, "*The subject is pregnant with great difficulty. It has been so treated by those who have considered it most ; and I now allude to Lord Redesdale's book, which is a wonderful effort to collect what is to be deduced from authorities speaking so little what is clear, that the surprise is not from the difficulty of understanding all he has said, but that so much can be understood !*" The result of this cause is also edifying ; see the above report : it may be said to have been "hushed up," as "it was proposed that the Bill should be dismissed without costs, which proposal was acceded to." If in "a multitude of Counsellors there is wisdom" the parties in this cause stood a good chance of reaping it. For the Plaintiffs, were the Solicitor General, Mr. Richards, Mr. Stanley, and Mr. Touchett. For the Defendants, the Attorney General, Mr. Mans-

be quoted if further evidence was necessary.* These reflections are reluctantly made on the character of Lord Hardwicke, which has been the unqualified theme of praise by all the eminent legal writers of the present day, and recently by a venerable and accomplished ornament of the profession, Mr. Butler.† But historical truth would be compromised by their suppression; it is more imperative to treat with stern integrity the character of the dead than the living—

“ Ne quid falsi dicere audeat;
Ne quid veri non audeat.”

field, Mr. Piggott, Mr. Alexander, Mr. Romilly, Mr. Cox, Mr. Hart, Mr. Steele, Mr. Fonblanque, Mr. Bell, and Mr. Horne!!! This Report alone speaks volumes.

There cannot be a greater condemnation of the Law than the high repute of the treatises of Fearne, Lord Redesdale, and other abstruse and subtle law writers. However great the merit of the authors in developing the mysteries of law-craft, the existence of such occult legal principles is a standing national disgrace.

* “The Jurisdiction of the Chancery as a Court of Equity Researched, and the traditional obscurity of its commencement cleared. London, 1733.” 8vo.

“A scene of corruption discovered: with some particulars of a melancholy place, in a letter to the Right Honourable Philip Lord Hardwicke, Lord High Chancellor of Great Britain. By a Gentleman in distress. *Experientia docet*. London, 1735.” 8vo.

“An Historical Essay on the Jurisdiction of the Court of Chancery and incidentally of the other Courts. London, 1735.” 4to.

“A Discourse on Fees of Office in Courts of Justice. London, 1736.” 8vo.

“The Law and Lawyers laid open in twelve Visions, to which is added Plain Truth, in three Dialogues, between Truman, Skinall, Dryboots, three attorneys, and Season, a bencher. London, 1737.” 12mo. pp. 269.

See also a curious narrative and history of a Chancery suit, inserted in a paper called the *Inspector*, 17 July, 1754.

† Butler's *Reminiscences*, 4th ed. vol. i. p. 132.

It is now grateful to notice the zealous interest and ability displayed by Lord Hardwicke in a professional correspondence with Lord Kames on the subject of the Equity jurisdiction of England and Scotland.* In 1760 Lord Kames published his *Principles of Equity*.† In this work he treats Equity as a science, and traces historically the rise of the courts in each of the United Kingdoms. The origin of the English Chancery has been fully unravelled in the present pages; and Lord Kames shews that the source and powers of the Equity jurisdiction were much the same in Scotland, except that the privilege of the Sovereign to judge in his council, in all extraordinary cases to which the common law did not apply, was never expressly delegated or transferred as in England, to a particular tribunal, but was gradually assumed by the supreme court of the kingdom. After tracing the progressive enlargement of the Equity jurisdiction, he forcibly argues the necessity of Courts of Equity being governed by general rules: he admits that such rules must often produce decrees, that in equity, as in common law, are materially unjust; but he contends that this inconvenience should be tolerated to avoid a greater—that of rendering judges arbitrary, and their decrees so fluctuating that the public could never trust to them as a rule of conduct. He then considers the expediency of a separation of the equity and common law jurisdictions as in England, or the union of the powers of both in one tribunal as in the Supreme Civil Court of Scotland. Lord Bacon had declared himself

* Lord Woodhouselee's "Memoirs of the Life and Writings of Henry Home, Lord Kames. Edinburgh, 1807." 2 vols. 4to.

† Printed at Edinburgh, 1760, in a folio volume.

strongly in favour of a separation of jurisdictions.* The arguments on the opposite disadvantages and benefits of blending law and equity, are well known to the legal reader of Lord Kames's law tracts. His Treatise on the Principles of Equity excited considerable attention throughout the kingdom from the importance of the subject and its profound legal erudition. Previous to its publication, Lord Kames communicated the Introduction to Lord Hardwicke, who in a letter, dated 30 June, 1759, corresponds with the author on its important questions. The learning and practical opinions displayed in Lord Hardwicke's letter, and its variance with some inconsistent observations of Blackstone† on Lord Kames's Treatise induce its insertion in this volume.‡ Lord Hardwicke in this correspondence certainly contends that the jurisdictions of common law and equity should not be committed to the same, but separate courts; he admits however the partial advantages and inconveniences of both systems, and that there is ground for considerable difference of opinion. He agrees with Bacon that both courts ought to be subjected to some general rules for the purpose of establishing an uniformity of proceedings, and a consistency in judgments; though the rules of the court of equity, he contends, cannot be so fixed and invariable as those of the latter, but must admit of judicial determinations according to conscience and the *arbitrium boni viri*.

* "Apud nonnullos receptum est, et jurisdictio, quæ decernit secundum æquum et bonum, atque illa altera quæ procedit secundum jus strictum, iisdem curiis deputentur; apud alios autem, ut diversis: omnino placet curiarum separatio. Neque enim servabitur distinctio casuum, si fiat commixtio jurisdictionum; sed arbitrium legem tandem trahet — *De Aug. Scient.* lib. viii. cap. 3, aphor. 45.

† Appendix, No. 4.

‡ Commentaries, b. iii. c. 37.

The interest in the general principles of his profession and the anxiety displayed by Lord Hardwicke in this letter, to examine impartially the merits of so opposite a system to that of the court over which he had presided, convey more real praise than the poetical productions of numerous eulogistic writers who celebrated the character of this distinguished lawyer. Lord Hardwicke resigned his office in 1756. He died at an advanced age in 1764, and in the full possession of his vigorous powers of mind.*

On the retirement of Lord Hardwicke in 1756, the seals were again placed in commission with Sir John Willes, Sir Sydney Stafford Smythe, and Sir John Eardley Wilmot. In the discharge of the duties of this important station, it is recorded, that Sir Eardley Wilmot particularly gave such universal satisfaction that it was generally expected he would eventually preside alone in the court of Chancery;† the great seal,

* Avarice was a ruling passion in this Chancellor, as it had been in several of his predecessors and successors, which may be well explained by the early economical habits of men, who, in their youth, encountered the severe and lasting discipline of pecuniary need; but it is not so easy to account for the parsimony of so many of their *ladies*. Lady Hardwicke used to save the embroidered velvet purses (annually renewed) in which by long custom the chancellors of England carried the great seal. The purses of her husband's chancellorship, just twenty in number, her ladyship formed into the hangings and magnificent curtains of a state bed.

† "Memoirs of the Life of Sir John Eardley Wilmot. 1802." 4to.—It appears, however, by the following letter, that this upright judge would not have accepted of the office:—"The acting junior in the Commission "is a spectre I started at, but the sustaining the office alone I must and "will refuse at all events. I will not give up the peace of my mind to "any earthly consideration whatever. * * * Bread and water are nectar "and ambrosia, when contrasted with the supremacy of a court of justice. "Yours, &c. E. WILMOT." 18 Nov. 1756.—p. 9.

however, after continuing in commission about a year, was delivered to the Attorney General, Robert Henley, with the title of Lord Keeper. The intelligent biographer of Lord Chief Justice Wilmot makes some sensible remarks on these perpetual changes of judicial offices:—"It is one of the greatest advantages which the courts of law have over the court of Chancery, that they are not affected by changes in the administration of public affairs. It may be very proper that one great law officer should have a seat in the cabinet, and be always at hand to advise his majesty's ministers on important subjects of law and the constitution; but it is very fortunate that this is not the case with the venerable magistrates who preside in the courts of justice: they are thus kept free from the imputation of political bias, and have also more leisure for the laborious duties of their station: this was frequently an observation of Sir Eardley's, and no small consolation to him, both whilst he continued in the King's Bench, and when he afterwards presided in another court."—p. 20.

Sir Robert Henley, afterwards Lord Northington, obtained the seals in June, 1757. If the coarse manners and private habits of this chancellor had been the test of his official excellence, he would have been but an indifferent equity judge. He possessed however considerable abilities and legal acquirements, and gave tolerable satisfaction to the suitors of his court. But he redressed no abuse, and in no degree improved the character of his jurisdiction. He was nevertheless aware of the existence of numerous grievances in his court, particularly the delays in the masters' offices. It is recorded that on the hearing of a suit, when pressed by counsel to refer a

complicated matter of account to a master, Lord Northington very deliberately drew out his watch from his pocket, "observe" (said he, addressing himself to the court,) "this curious piece of mechanism, if it was out of order, I would as soon send it to a blacksmith to be set right, as refer an account like this to a *master*.—I refer it to two merchants."*

In this reign a most unconstitutional means of corruption was invented, in a statute which vested in the crown the unlimited application of a sum granted for augmenting the salaries of the judges.† Another inroad was also artfully made on the independency of the judges, by the new doctrine that no commission could continue in force longer than the life of the king, by whom it was granted, that therefore all commissions (which doubtless at the Revolution were intended to be enjoyed for life) should be renewed by a new king at his accession.‡

The intrigues, duplicity, and corruption of the public characters of this reign have become proverbial. *Place* appears to have been the ultimate object of every party, and in the words of their worthy chronicler, Bubb Dodington, they were *All for quarter day*.¶

* "The Speaker, Onslow, who attended with the most scrupulous regard, both in public and private, to the dignity of his character, was complaining, on his arrival later than usual at the house of commons, on some day of important business, that he had been stopped in Parliament-street, owing to the obstinacy of a carman; and was told that the Lord Chancellor had experienced a considerable delay from the same cause—"Well" (said the Speaker,) "did not your lordship shew him the mace, and strike him dumb with terror?" "No" (it was replied) "he did not; but he swore by God, that if he had been in his private coach, he would have got out and beat the damned rascal to a jelly."—*Lives of Eminent Lawyers*. p. 17.

† Stat. 32 Geo. II. c. 35.

‡ Smollett's *History*, vol. v. p. 295.

¶ Dodington's *Diary*, 3rd ed. p. 407.

No legislative attempts whatever were made or even contemplated in the reign of George II., to remedy the abuses of the court of Chancery, or to reform the general system of English jurisprudence. The only instance of consolidation of the statute law was a general act for the regulation of the Navy.* The "Grand Committee of Courts of Justice" was annually revived, and the usual periodical report of the Expired and Expiring Laws was laid on the table of the house; but these periodical formulæ were mockeries of legislation. It must however be recorded to the honour of Lord Hardwicke that he advised and partly prepared the bill for abolishing the heritable jurisdictions in Scotland.†

A most extraordinary and overwhelming addition was made to the Statutes at large in this reign, in one thousand four hundred and forty-seven Public Acts, and one thousand two hundred and forty-four Private Acts!‡

* Stat. 22 Geo. II. c. 33.

† Stat. 20 Geo. II. c. 43.

‡ Mr. Barrington, in his observations on the Statutes, though an antiquary and anti-reformer, laments the increasing and confused heap of written law. He proposes "that two or more barristers should be appointed, who from year to year, might make a report to the privy council, as likewise to the Lord Chancellor, the Master of the Rolls, and the twelve Judges, of a certain number of Statutes which should either be repealed or reduced into one consistent act. It may be proper also that they should at the same time transmit such Statutes as they may propose to substitute, in the room of those which seem liable to objection. There will then be the whole vacation for the consideration of such intended alterations; and, if they should be approved of, they might pass into laws the subsequent Session of Parliament. The good consequences of such a Reformation need not be dwelt upon, as the Statute book would be reduced to half its present size, and the subject better know the law he is to be governed by."—*Appendix*, p. 557 to 564. 4th ed. 1775.

The contemporary Reporters made the following additions to the recorded legal decisions of the different courts.

GEORGE II.—1727.

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| <i>Ambler</i> (<i>Chan. and Exch.</i>), 11 to 34 | <i>Fitzgibbon</i> (<i>K. B. C. P. Exch. and Chan.</i>), 1 to 5 |
| Andrews (<i>K. B.</i>), 11 to 12 | <i>Fortescue</i> , 1 to 10 |
| <i>Atkyns</i> (<i>Chancery</i>), 9 to 27 | Foster (<i>Crown cases</i>), 16 to 34 |
| Barnardiston (<i>K. B.</i>), 1 to 7 | <i>Kelynge, Wm.</i> (<i>K. B. C. P. and Chan.</i>), 4 to 8 |
| <i>Barnardiston</i> (<i>Chancery</i>), 13 to 14 | Leach (<i>Crown cases</i>), 4 to 34 |
| Barnes (<i>C. P.</i>), 5 to 34 | <i>Moseley</i> (<i>Chancery</i>), 1 to 3 |
| <i>Belt's Supplement to Vesey</i> , (<i>Chan.</i>), 20 to 28 | Parker (<i>Exchequer</i>), 16 to 34 |
| Blackstone, Wm. (<i>K. B. and C. P.</i>), 20 to 24, and 30 to 34 | <i>Peere Williams</i> (<i>Chan. and K. B.</i>), 1 to 8 |
| Brown (<i>Parliamentary cases</i>), 1 to 34 | Practical Register (<i>C. P.</i>), 1 to 15 |
| Bunbury (<i>Exchequer</i>), 1 to 14 | Raymond, Lord (<i>K. B. and C. P.</i>) 1 to 6 |
| Burrow (<i>K. B.</i>), 30 to 34 | Reports temp. Hardwicke (<i>K. B.</i>), 7, 10 |
| Burrow's Settlement Cases, (<i>K. B.</i>) 5 to 34 | Robertson (<i>Appeal cases</i>) |
| Cases of Settlement (<i>K. B.</i>), 1 to 5 | Sayer (<i>K. B.</i>), 25 to 29 |
| Cases of Practice (<i>C. P.</i>) 1 to 20 | <i>Select Cases in Chancery</i> , 1 to 6 |
| <i>Cases temp. Talbot</i> (<i>Chancery K. B. C. P.</i>), 7, 10 | Sessions Cases (<i>K. B.</i>) 1 to 20 |
| <i>Comyns</i> (<i>Exch. Chan. and before the Delegates</i>), 1 to 13 | <i>Strange</i> (<i>K. B. C. P. Exch. and Chan.</i>), 1 to 21 |
| Cunningham (<i>K. B.</i>), 7 to 10 | <i>Vesey, sen.</i> (<i>Chancery</i>), 20 to 28 |
| <i>Dickens</i> (<i>Chancery</i>), 1 to 34 | <i>Willes</i> (<i>C. P. Exch. Chan. and House of Lords</i>), 11 to 32 |
| <i>Eden</i> (<i>Chancery</i>), 31 to 33 | Wilson (<i>K. B. C. P.</i>), 16 to 34 |

CHAPTER XII.

OF THE COURT OF CHANCERY,
DURING THE REIGNS OF GEORGE III. AND GEORGE IV.,
A. D. 1760 TO 1827.

To say nothing of the expence, the tediousness of the process, and intricacy of the forms, our Courts of Equity, as at present established, are an actual violation of the British Constitution. The COURT OF CHANCERY is a fungus, arising God knows how, out of the arbitrary power claimed by some of our ancient monarchs, to interfere in the process of our Common Law Courts, and its jurisdiction was certainly unheard of for centuries after the enacting of *Magna Charta*, then can anything be more absurd, when the constitution of Great Britain expressly says that, *no man shall be judged as to his person or property, otherwise than by the verdict of his peers or equals*, to leave three fourths of the property brought into litigation, throughout the kingdom, at the arbitrary and discretionary authority of a single judge, avowedly dependent on and amoveable at the will of the crown?—*An Essay towards a free examination of the Laws of England in theory and practice, &c. by Leman Thomas Rede of the Inner Temple. HAMBURG, 1802. vol. ii. p. 29.*

The present may fairly be denominated the *Age of Lawyers*. Formerly men were overwhelmed in the vassalage of Priesthood. Priests were in those times a kind of Solicitors in the Chancery of Heaven, invested however, with all its plenitude of power on Earth. Lawyers are now what Priests were then; and the Tribute paid to them is as great as Superstition once rendered to the Church. *Lives of Eminent Lawyers. 1790. p. 199.*

THE reign of George III. may be truly denominated the age of War. In the early part of it the contest with the North American Colonies wholly engrossed the attention of the English legislature and people. The French Revolution and succeeding continental wars sub-

sequently occupied the national interest; and the prevalence of high court principles thenceforwards termed all reformers jacobins and innovaters, and designated all attempts at judicial amendments and changes as revolutionary madness. The nation and its government were far too deeply engaged abroad to attend to reforms at home; and it was not till the crusading spirit of military glory had been subdued by its expensiveness that the legislators of GREAT Britain vouchsafed to review the state of their judicial establishments and to consider the means of their improvement.

On the 30th July, 1766, on the re-formation of the ministry by Lord Chatham, Lord Camden was created Chancellor. This distinguished lawyer and political character discharged his important judicial functions with great judgment and to general satisfaction: * the business of the court of Chancery however greatly increased under his chancellorship, and no measures were taken by him, or under his influence, for remedying any of the long existing and increasing evils of the equity system. The political history of the last reign is too fully in the recollection of the reader to require any detail of events so comparatively recent as the American war, and the circumstances preceding it. Lord Camden quitted office, and joined the opposition against Lord North's administration in 1770. It has been an historical doubt whether he "resigned" his official station, or was

* "He was apt, on the other hand, to be a little too prolix in the reason of his decrees, by taking notice even of inferior circumstances, and viewing the question in every conceivable light. This, however, was an error on the right side, and arose from his wish to satisfy the bar and his own mind, which was perhaps to a weakness, dissatisfied with its first impressions, however strong."—*Biographical Anecdotes, by the Author of Anecdotes of Lord Chatham*, vol. i. p. 385.—This valuable work contains many facts and observations on the eminent political and judicial characters of the last century not to be met with elsewhere.

“turned out” for an anti-ministerial vote, but the enquiry is no further interesting than as illustrative of the political changes this important judicial office has been visited with in consequence of its present unnatural union with the cabinet.*

Lord Camden was succeeded by Charles Yorke, second son of the late Chancellor, Lord Hardwicke. The duration of his judicial power was but *three days*, between the 17th and the 20th January, 1770; nor does the author know whether he ever presided in the court. The fate of this accomplished advocate will always be cited as a sad and fatal example of the evils of blending the political and judicial character. After a life of resistance to the temptation of a court and an unvarying consistency in the constitutional principles of his party, Mr. Yorke in an evil moment of temptation, deserted his friends and violated his principles in accepting the seals with the title of Lord Morden. The periodical works of the day, and Walpole in the *Royal and Noble Authors*, record that the Chancellor died *suddenly*. It is a fact well known to many of his contemporaries yet living that, in the bitter anguish of self-condemnation and wounded conscience, he perished by his own hand! It has been said of a similar event “happily for the human race, all the extenuations which accompany such cases are reserved for the tribunal of that Being who knoweth of what we are made, and remembereth that we are but dust.” If the political apostacy which has been

* “Lord Camden, as Chancellor, being one of the members of the Cabinet, highly disapproved of it (Wilkes’s case); for this disapprobation he was turned out of his situation as Lord Chancellor. He had, when he accepted the great seal, secured the first vacant tellership of the Exchequer, in case he was removed, and until such vacancy should happen, a pension upon Ireland of £1,500. per annum. These were not thought improper terms for the present times.”—*Biographical Anecdotes*, vol. i. p. 399.—See also Butler’s *Reminiscences*, vol. i. 4th edit. p. 132.

so often recently and unblushingly displayed at the English Bar can ever be atoned for, it is when the self degradation of the apostate is thus dreadfully confessed ; shewing at least a repentance commensurate with the offence. In this observation the crime of self-destruction is far from being palliated, much less defended ; but it is impossible not to pity the pressure of self degradation however occasioned, or not to estimate a man, who in his acute sensibilities and fatal end, shewed that a momentary seduction only had overcome an honorable and noble mind.*

* Hargrave, in his preface to Hale, (p. clxxxi) thus alludes in language of rhetorical bathos and ill judged panegyric to the victim of this memorable catastrophe :—" that modern constellation of English jurisprudence, that elegant and accomplished ornament of Westminster Hall in the present century, the Honorable Charles Yorke, Esquire ; whose ordinary speeches as an advocate were profound lectures ; whose digressions from the exuberance of the best juridical knowledge were illuminations ; whose energies were oracles ; whose constancy of mind was won into the pinnacle of our english forum at an inauspicious moment ; whose exquisiteness of sensibility at almost the next moment from the impressions of imputed error stormed the fort of even his cultivated reason, and so made elevation and extinction coterminous ! and whose prematureness of fate, notwithstanding the great contributions from the manly energies of a Northington, and the vast splendour of a Camden, and notwithstanding also the accessions from the two rival luminaries which have more latterly adorned our equitable hemisphere, caused an almost insuppliable interstice in the science of english equity. To have been selected as the friend of such a man was nearly *instar omnium* to an english lawyer. Even to be old enough, as the prefacer confesses himself to be, to have received the impressions of Mr. Charles Yorke's character as a lawyer, from the frequency of hearing his chaste, delicate and erudite effusions in the discharge of professional duty, is some source of mental gratification."

This passage singularly displays the wide distinction between the acquired learning of an industrious lawyer, and the discrimination of a sound judgment : it occasioned the following lines in the "Pursuits of Literature:"—

* With Hargrave to the Poets approach with awe,
And sense and grammar sink in Yorke and law."

On this lamentable vacancy of the chancellorship the seals were again temporarily placed in commission with Sir Richard Aston, Sir Sydney Stafford Smythe and Sir Henry Bathurst. The decrees of these commissioners are asserted to have been framed by Lord Mansfield, particularly that on the Pynsent estate, in the case of the Earl of Chatham, "which giving great dissatisfaction to the judges, Lord Mansfield, upon the appeal to the house of lords, proposed a question to the judges, worded in such a manner as to put the matter of doubt on a more intelligible and equitable footing. Upon the judges' answer, the commissioners' decree was reversed; and Lord Chatham obtained the estate, according to the testator's intention."* The latter commissioner, afterwards created Lord Apsley and Earl of Bathurst, was appointed Chancellor on the 22nd of January, 1771, which occasioned Sir Fletcher Norton to say, "that what the three could not do, was given to the most incapable of the three." Lord Bathurst's judicial incompetency is generally acknowledged. The following character, pregnant with reflections, has been not unjustly given of his preferment and administration of equity: "He *travelled* all the *stages* of the law, "with a rapidity that great power and interest can alone in the same degree accelerate. His professional character in his several official situations, was never prominently conspicuous till that wonderful day when he *leapt* at once into the foremost seat of the law. Every individual member of the profession stood amazed; but time, the great reconciler of strange events, conciliated matters *even here*. It was seen that the noble Earl was called upon from high autho-

* Biographical Anecdotes, vol. i. p. 400.

“ rity to fill an important office which no other could be
 “ conveniently found to occupy. Lord Camden had
 “ retired without any abatement of *rooted* disgust, far
 “ beyond the reach of persuasion to remove. The great
 “ *Charles Yorke*, the unhappy victim of an unworldly
 “ sensibility, had just resigned the seals and an inesti-
 “ mable life together: where could the eye of adminis-
 “ tration be directed? The rage of party ran in torrents
 “ of fire. The then Attorney and Solicitor General
 “ were at the moment thought ineligible—perhaps too,
 “ the noble Lord then at the head of affairs, and who
 “ was yet *untried*, had a policy in not forwarding tran-
 “ scendant abilities to obscure his own. Every such
 “ apprehension vanished upon the present appointment.
 “ This man could raise no sensation of envy as a rival,
 “ or fear as an enemy.”*

In June, 1778, the Attorney General Thurlow was appointed to succeed Lord Apsley as chancellor, and raised to the peerage, the usual collateral accompaniment of the seals. It is now generally admitted that the character of Lord Thurlow has been greatly overrated, and that a talent for political intrigue, aided by overbearing manners, and a strong but coarse mind, forced him into power and maintained an ascendancy on the credit for ability and superiority which really did not exist.† As a lawyer also his reputation has not gained from

* *Strictures on the characters of Eminent Lawyers.* 1790. p. 76.

† “ Lord Thurlow was one of those persons who, being taken by the world at their own estimate of themselves, contrive to pass upon the times in which they live for much more than they are worth. His bluntness gained him credit for superior honesty, and the same peculiarity of exterior gave a weight, not their own, to his talents; the roughness of the diamond being by a very common mistake, made the measure of its value.”—*Moore's Life of Sheridan*, (2nd. ed.) vol. ii. p. 28.

time. Grievous complaints of delay rung through the country ; and the judgments which he tardily gave were frequently considered as formed without reference to judicial principles, often hasty, and without a patient hearing of the merits of the suit and the conflicting arguments of the advocates.

Political intrigue displaced Lord Thurlow in April, 1783, and the seals were given in commission to Lord Loughborough, Sir William Henry Ashurst, and Sir Beaumont Hotham. Lord Thurlow was not a man to lose office without a fair prospect of a future and more secure tenure. Accordingly, on Mr. Pitt's premiership, he was re-appointed Chancellor in the December following. In the recent life of Sheridan, by Moore, the latest and most interesting account is given of all the intrigues of this accommodating Chancellor to retain his place and patronage. Sheridan, in 1788, in the early illness of the late king, and when negotiations and plans were meditated for securing the ascendancy of the Prince of Wales, negotiated with Lord Thurlow for the co-operation of that learned law-lord, in consideration of his lordship being allowed to retain the office of Chancellor under the Regency. One of Payne's letters to Sheridan reveals the writer's opinion of the pliability of Thurlow in the passage, "I think the Chancellor might take a good *opportunity* to break with his colleagues, if they propose restriction."* This negotiation was commenced in the absence of Mr. Fox, who was then abroad : on his arrival in England, he was much embarrassed by the intrigue, in consequence of an honourable pledge to bestow the great seal, in the event of a change, on Lord Loughborough. The Whig party however were too far committed with Lord

* Moore's Life of Sheridan, vol. ii p. 27.

Thurlow to recede, and in a letter of Fox to Sheridan the former signifies his reluctant assent to the intended coalition with Thurlow ; “ I have swallowed the pill,—a most bitter one it was,—and have written to Lord Loughborough, whose answer of course must be consent.”* A subsequent correspondence of Lord Loughborough with Sheridan displays an amusing insight into the jealousies of the two rival candidates for the office of Chancellor. Lord Loughborough writes ; “ the chancellor’s object evidently is to make way by himself, and he has managed hitherto as one very well practised in that game.” The abrupt and treacherous termination of these negotiations by Lord Thurlow is well known ; his duplicity, though despicable, was a proper retribution on those who sought power by such an unnatural agency. It is thought that Lord Thurlow from his frequent visits to the palace, and his medical information respecting the king, anticipated the monarch’s early recovery, or feared that the influence of Lord Loughborough with Mr. Fox might eventually supplant him in the possession of the seals. But whatever were his motives it is certain that he shrewdly considered adherence to Mr. Pitt as the safest speculation ; and, within a few hours of his artful tampering with the Whigs, he pronounced in the house of lords the memorable declaration, which reverberated throughout the country, that “ his debt of gratitude to His Majesty was ample, for the many favours he had graciously conferred on him, which when he forgot, might God forget him ! ” Wilkes is reported to have ejaculated on first hearing of this breach of the third commandment, “ Forget you ! he’ll see you d——d first.”†

* Moore’s *Life of Sheridan*, vol. ii. p. 31.

† *Ibid.* vol. ii p 36.

In a character of Lord Thurlow some excellent remarks are made on the office of chancellor and its inconsistent duties. "It has been the misfortune of this country, that the legal and political characters have been lately so blended, that more attention has been paid to the latter than to the former, and often at the expence of it. This was not formerly the case; and we pronounce, without hesitation, that the public suffers by the unnatural union. Let those who have been long anxiously looking for decrees in the court of Chancery, be asked their sentiments of a political chancellor: they will paint their misery in such colours, as must convince every impartial person that the supremacy in the house of lords, and in the first court of equity should not be in the same person. Many lawyers have suggested the prevalence of a species of *indecision* totally inconsistent with any very comprehensive knowledge of jurisprudence, and totally different from the general mode of proceeding in all other situations. The practisers complain of the petulance and illiberal treatment they frequently meet with, and the surliness and ill-nature which is often to be seen in public."* Another biographer of his lordship portrays him in similar language and makes equally pertinent observations on the office. "Seated on the chancery bench, the eyes of mankind were fixed upon him. The iron days of equity were thought to be passed; and it was fondly expected, that the epoch of his advancement would be the commencement of a golden age; the nation felt that they had long groaned under the dominion of their own chancellors, the slowness of their proceedings had mouldered insensibly away, in

* *Lives of Eminent Lawyers*, p. 21.

“ the pleadings of two centuries, some of the fairest
 “ fortunes in the kingdom; and the subtleties of the civil
 “ law had involved, in the voluminous mazes of a chan-
 “ cery bill, rights and claims which the municipal courts
 “ would have immediately recognized. At once haughty
 “ and indolent by nature; attached to a party, and
 “ distracted by politics; with a mind fitted to discoun-
 “ tenance abuse, and appal oppression, Lord Thurlow
 “ disappointed their expectations; and by his conduct,
 “ forcibly illustrated that great legal axiom, that the
 “ duties of the Woolsack and the Chancery are incom-
 “ patible.” The sonorous epithet of “ great ” has been
 appended to the name of Thurlow, but undeservedly, as
 is fully shewn by the facts above cited. Additional
 proofs of his corruptness and judicial failings might be
 given, but would only multiply demonstrations: his
 character has been fully exhibited in later political and
 biographical publications.* Besides the appellation of
great, he had the more descriptive cognomen of “ *the
 Tiger!* ” †

In June, 1792, on the retirement of Lord Thurlow,
 three other Commissioners were appointed to this im-
 portant office, viz. Sir James Eyre, Sir William Henry
 Ashurst, and Sir John Wilson, the usual medley of
 common law and exchequer judges. ‡ They presided in
 the court of Chancery fifteen months, when Lord Lough-
 borough, (subsequently created Earl of Rosslyn) was

* Brydges's Collins's Peerage.—Gent. Mag. vol. lxxvi.—Boswell's Life
 of Johnson.—Dr. Parr's Preface to Bellendenus.—Butler's Reminiscences,
 vol. i.

† Wrexall's Own Times, vol. i. p. 527.

‡ In one of the debates on Mr. Fox's libel bill, (21st May, 1792,) the
 late Marquis of Lansdowne said, “ the law was daily fluctuating, and
 judges were changing their opinions.”

nominated Chancellor on the 28th September, 1793. The constant object of his Lordship's ambition was *The Seals*, and as he could not obtain them through his political connexion with Mr. Fox, he courted the possession by *ratting* to Mr. Pitt. His tergiversation and apostacy have been quoted as another instance, that "the patriotism of a lawyer is almost proverbially *problematical*." He was educated for the Scotch bar, where he commenced his career as a pleader, and is said to have changed the *venue* to England in consequence of an affront received from the northern bench, but another motive for his southern emigration might have been *contiguity* to the more valuable preferment of the profession. Lord Loughborough in his administration of the Chancery, and compared with his predecessors, was an equity judge of average talents and integrity; but he was not more sensible to the unredressed grievances of his court, and discouraged every attempt to remedy them. In 1801 age and infirmity forced him to resign the chancellorship, not before his official weakness became injurious to the suitors. Sir Egerton Brydges* writes,—“it is difficult to speak of public men, so lately deceased, free from the prejudices created by individual feelings. Lord Rosslyn appeared to be a man of subtle and plausible rather than of solid talents. His ambition was great, and his desire of office unlimited. He could agree with great ingenuity on either side; so that it was difficult to anticipate his future by his past opinions. These qualities made a valuable partizan, and a useful and efficient member of any administration.” Junius, with his usual caustic invective, strongly etched his lordship's political character—“the wary Wedderburne never threw away the scabbard,

* Collins's *Peerage*, vol. ix. p. 449.

nor ever went upon a forlorn hope." And Churchill indelibly marked him in some well known couplets—

“ To mischief trained, ev’n from his mother’s womb,
Grown old in fraud, though yet in manhood’s bloom ;
Adopting arts, by which gay villains rise,
And reach the heights, which honest men despise ;
Mute at the bar, and in the senate loud,
Dull ’mongst the dullest, proudest of the proud,
A pert, prim, prater of the northern race,
Guilt in his heart, and famine in his face,
Stood forth”—*

Lord Loughborough was succeeded by LORD ELDON, on the 14th of April, 1801, and excepting the short intervening chancellorship of Lord Erskine from the 7th of February, 1806, to the 1st of April, 1807, he retained possession of the seals till within a few weeks of the publication of the present volume, May, 1827. When the sun of his judicial power and patronage is setting in the recent ministerial revolutions, it would be illiberal to treat his professional character with needless asperity, or to withhold the meed of praise so justly due to the industry, integrity, and *technical* knowledge of equity which peculiarly marked his long career in the court of Chancery. It is to be regretted that the judicial failings of Lord Eldon have been magnified into the one great and original cause of the evils of the court, which may give rise to a mistaken expectation that his retirement from office will of itself lead to the climax of its reformation. These pages demonstrate that the abuses attendant on the administration of English Equity, are of remote origin and progressive accumulation: that long before Lord Eldon was born

* Churchill's Poems. The Rousiad, l. 70.

they existed in an equal degree, compared with the relative quantum of litigation before the court, and have merely been aggravated by his constitutional tendency to doubt and procrastinate. But although Lord Eldon is absolved from the moral responsibility attaching to the *source* of the abuses of his jurisdiction, he is deeply culpable in upholding and increasing them by a long continued denial of their existence, and an unceasing opposition to their investigation and legislative removal. Since Lord Eldon's accession to the chancellorship the funds of the suitors in court have *doubled* in amount, and the real property involved has probably quadrupled. Many of the evils of his judicial reign have doubtless originated in the increase of litigation, arising out of the vast mercantile transactions of the nation. A country pre-eminently commercial, by the multitude and intricacy of its contracts, will engender lawsuits in a far greater relative proportion than other states. It was however the duty of a judge of liberal and comprehensive mind to have adapted his court to the new order of things; and so far from the antiquity of the abuses forming any valid justification of Lord Eldon's conduct, it should have been an additional motive for securing his attention to the improvement of his extended jurisdiction. But he invariably discountenanced every legislative enquiry and proposed reform. The political night-mare of *innovation* haunted his imagination: in his legal vocabulary, reformation and revolution were synonymous, and the latter word was another synonym for destruction. He belonged to the old school of Aristotelian Lawyers, deeply versed in the fictions, subtilties and procedure of English Equity; and as a pedantic linguist conceives the acquisition of dead languages to be, not the means of acquiring knowledge, but knowledge it-

self, so Lord Eldon mistook the means for the end, the *forms* of Justice for the *substance* of Equity. Notoriously ignorant of, and by nature incapable of justly appreciating, the great principles of legislative science and jurisprudence, he superstitiously adhered to every thing *old* because it was ancient, and objected to the introduction of every thing modern because it was *new*. The progress of jurisprudence in other countries was not his study but his horror; and he would as soon have consented to introduce judicial improvements from abroad; as to admit foreign corn without duty. Perceiving what is obvious to every reflecting being, that hasty decisions in doubtful cases furnish incontrovertible proofs of weakness of mind, he yet failed to discover that to distrust that which is plain, and doubt that which is clear, is an equally convincing evidence of imbecility of intellect. He greatly resembled Coke; though he prided himself on his imagined similarity to a man of much greater mind, the "impeached revolutionist," Lord Somers. The arguments of Coke, in the preface to the fourth part of his Reports, exactly correspond with the reasoning of the late chancellor in favour of established and ancient law:—"the Locrenses in Magna Græcia had a sharp law against innovation; Plato denounces inventors of new things; Suetonius writes to the same purpose; Periander of Corinth has an apothegm that old laws and new meats are fittest," *ergo*, the laws of England must not be altered! The character given of Coke applies exactly to Lord Eldon; that he is "a mere great lawyer, and like all such had a mind so walled in by law-knowledge, that in its bounded views it shut out the horizon of the intellectual faculties, and the whole of his philosophy

lay in the Statutes."* No man has ever yet explored the heavens and surveyed the stars with a microscope.†

The state of the Court of Chancery during the reign

* D'Israeli.

† The biography of Lord Kames contains a just tribute to the character of that great man and a contrast to the above portrait of Lord Eldon, which it is hoped future *English* judges will merit—"He had a just regard for the laws of his country, which, in as much as they are founded on sound and rational principles, it was his earnest endeavour to preserve inviolate, and to strengthen, by a reverential adherence to their enactments; as being fully aware, that the *certainty* of the law is the best security both against private oppression and public disorder.* But he wisely distinguished between the certainty of law, (as meaning the precision of its precepts and strictness of its execution,) and its immutability; or the resistance to that gradual improvement which it is fitted to receive, like every other science, from time and an enlightened experience. More profoundly conversant than most men in the science of General Jurisprudence, he was sensible that the Law of Scotland was in many of its branches in a state of great imperfection; that some of its doctrines were utterly anomalous and irreconcilable to principle; and that others, which originally had their foundation in expediency, were, in the lapse of time, which alters both the political relations and the habits of mankind, become, from that change of circumstances, both inexpedient and contrary to material justice. Of these the rigorous observance, from a blind veneration of antient practice, appeared to Lord Kames to be a foolish and blamable sacrifice of reason to prejudice. Law he considered only as the Minister of Justice, and entitled to regard no otherwise than as subservient to that great end * * * *. Law, which has for its province the regulation of human society, must accommodate itself to the varying condition of that society which it governs. It is, therefore, from its very nature, mutable, and susceptible of perpetual improvement. But justice, which is the object of law, is fixed, immutable and certain: The one imperfect, as the invention of man; the other perfect, as the ordinance and attribute of his Maker. A good judge, like an able pilot, will use the former as his compass; but aware of its occasional error and variation, he will look to the latter as his polar star."—*Memoires*, vol. i p 156.

* Vide Bacon, De Augment. Scient.—Idem Just. Univ. tit. i. aphor. 8.

of George III., and at the present time, is so well known as to obviate the necessity of any detailed account of the numerous works which have in the last half century exposed its abuses; and it is equally needless to recount the annual parliamentary motions and debates which have made its jurisdiction the subject of public discussion and interest. Many legal publications have inveighed in bitter terms against the festering grievances of the Courts of Equity: the partial citation and review of them would however fill a volume, and the more full and authorised exposition of the state of the Chancery contained in the late Parliamentary Returns and the printed Reports of the Royal Commissions supersedes the necessity of any detailed examination of ephemeral publications. The particular enumeration and abstract also of the various Statutes relating to offices and jurisdictions of the English Chancery, is not requisite, because, with the exception of the creation of the Vice Chancellor's court, and some late provisions for the improvement of the appellate jurisdiction of the House of Lords, little legislative alteration has been made or attempted in remedy of the evils, or in correction of the defective administration of justice. It was not indeed until the close of the reign of George III., that the legislature would even admit the existence of Chancery abuses! It was not till the perseverance and public spirit of a few individuals, had year after year, denounced those abuses in the House of Commons, that the subject of popular complaint could even be endured. All attempt at enquiry was *crushed*, to use a technical expression of the highest tribunal in the country. Clamour and party spirit were the stale and convenient imputations on the motives of every public representation of judicial grievances; and the

never-failing plea of the “antiquity of the English Constitution” supplied an argument for every abuse of long standing. The mental pliability of many lawyers has also been conspicuously displayed, and men notoriously the advocates of legal reform in *prunello* gowns have, when elevated into seats in Parliament and *silk* garments, become the most barefaced defenders of judicial iniquity and abuse. Alas! the People have no places or pensions to give away!

The overwhelming pressure of business on Lord Eldon, and the complaints “both deep and loud” of the whole country, at length induced an attempt to remove the evils of *delay* by the creation of an additional judge. In 1813, “An Act to facilitate the Administration of Justice,” constituted an additional judge assistant to the Lord Chancellor, under the name of *Vice Chancellor of England*.* His duties are to hear and determine all causes, matters and things which shall be at any time depending in the Court of Chancery of England, either as a court of law or as a court of equity, or incident to any ministerial office of the court, or which should be submitted to its jurisdiction; the decrees, orders and acts of the said Vice Chancellor, however, to be “*subject nevertheless in every case to be reversed, discharged or altered by the Lord Chancellor, &c. for the time being; and no such decree or order to be enrolled until the same shall be signed by the Lord Chancellor.*” The hasty and inconsiderate enactment of this statute was early demonstrated, and its consequences foretold when the bill was in committee. Sir Samuel Romilly, in whom all the dignity and graces of a high-minded English Advocate were so eminently displayed and

* Stat. 53 Geo. III. c. 24.

esteemed, opposed its principle, and recorded his opinions in a pamphlet the predictions of which have been literally fulfilled.* The evils of *Appeals* were the principal object of his strictures, and he anticipated that the disposing of them would demand of the Lord Chancellor, as large a portion of time as the Vice Chancellor would save the Lord Chancellor in other respects; that the expence of suits "*already grievously and oppressively high*" would be enhanced, the business of the court multiplied, and the final decision of causes protracted. Sir Samuel Romilly predicted that as the rules of the English system of Equity were not laid down in any statutes, (but were only to be collected from decisions of judges who were in a great degree the authors of the law they were administering, applying to the particular cases before them the rules which they had previously established,) judgments would be given and would be constantly reversed on appeal, according to the particular notions and peculiar habits of thinking of judges, dependent in no small degree upon the practice of the courts in which they had pleaded or expounded the law.

A Lord Chancellor may have been recently an Attorney General from a court of Common law: how excellently qualified to receive an appeal from an experienced equity Vice Chancellor! Nothing can be more palpably absurd, more *incongruous*, than the present state of the concurrent jurisdictions of the Lord Chancellor, the Vice Chancellor, and the Master of the Rolls. Solicitors in most equity cases have an *option* of conducting their litigation, particularly the most important, before either of these three great officers. It is clear that such a system must occasion an ever-varying tide

* "Objections to the project of creating a Vice Chancellor of England. London, 1813." 8vo.

of business, ebbing or flowing according to the legal repute of the judge for the time being. Sir William Grant, when Master of the Rolls, would necessarily attract far more business before him than his successor Sir Thomas Plumer. The merited public estimate of the judicial integrity and acuteness of Sir John Leach would turn the current of litigation back to the Vice Chancellor, and now again to the Rolls. The equity experience of Sir Anthony Hart will naturally occasion an influx of much business from the Lord Chancellor's Court which the latter usually absorbed. Surely a subdivision of the Equity jurisdictions might be advantageously made, so as to vest in each a distinct and independent judicial authority ; and all the courts might sit simultaneously, without that extreme inconvenience and confusion of advocacy which at present interferes with the conduct of litigation.

By section 3, the Vice Chancellor is to preside for the Lord Chancellor in his absence, or in a separate court at the same time that the Lord Chancellor is sitting. By section 8, he is to be paid for his salary the net yearly sum of five thousand pounds, free from taxes ; and by section 13, he is precluded from taking, receiving, or demanding any fee or reward whatsoever, over and above the salary before directed to be paid, for or in respect of any business which shall be done by him or his officers.

In consequence of some further parliamentary proceedings and an address to the Crown, *Royal Commissions of Inquiry* were constituted in 1816 and 1817, to " examine into the duties, salaries and emoluments of the several officers, clerks and ministers of Justice," of all the Courts of the United Kingdom, including the COURT OF CHANCERY. The object of this commission

was not sufficiently extensive, nor the commissioners of such character, as to effect any complete judicial reform; but much valuable information on the duties, salaries and fees of the officers of the Chancery, was collected in two Reports, respectively printed on the 6th of June, 1816, and the 6th of April, 1818. The first document contains the very meagre result of their labours, as far as any remedial propositions are concerned: * the second is merely a supplemental and short report. It is a singular instance of the nature of these commissions, that the total annual *amount* of fees and gratuities, and the relative quantity of labour performed for the remuneration, apparently formed no part of the enquiry, certainly no part of the report! No legislative results of any moment followed this Commission: parliamentary motion succeeded motion, and debate followed debate. The memorable discussions on the motions of Mr. M. A. Taylor and Mr. Williams are too voluminous and too fresh in the recollection of the reader to need any detail. The recent "Chancery Commission" ultimately was granted after an obstinate and long-continued denial of its necessity.

The conflicting statements and opinions which proceeded from the opposite sides of the House of Commons, on the great national question of the state of the Chancery, would astonish a foreigner ignorant of the *influence* under which members live, think and speak. The powers of the new Commission were certainly too restricted, and the majority of the Commissioners too much blinded by connexion with the court, to probe the wounds of justice to the bottom. Under the well known opinions and anticipated continued supremacy of Lord

Eldon, it was not probable that any report would be conceived or brought forth, which should lay bare the greatest evils of the jurisdiction, resulting from *patronage*, judicial *incompetency* and *extortion*. It is not intended to impute against the noble and learned persons who constituted that commission, any intentional concealment or evasion of the inquiry ; but they were by habit, education and circumstances ill fitted *alone* to conduct such an investigation, to discover or recommend the means of efficient reform.

The tedious details of two bulky and closely printed, folio volumes, containing 1154 pages, almost preclude the possibility of any critical review or abstract within the compass of the present volume. The opinions and views, however, of the author of these pages, are so singularly coincident with those contained in some excellent articles on the Chancery Report and Evidence, published in THE TIMES Journal, of last year, that their insertion in this work has been requested of the intelligent writer, a member of one of the Inns of Court, who has obligingly revised them for these pages. They will be found in the Appendix, No. 6, with a notice also of the pamphlet by Lord Redesdale, the noble Commissioner who did not sign the Report, probably for the reasons given in his publication.* Numerous reviews and pamphlets have issued from the press, too multitudinous for notice. An elaborate reply to Lord Redesdale, by Mr. Merivale,† is the most recent publication. Several practical points are ingeniously stated by Mr. Merivale in opposition to

* See Appendix, No. 6.

† "A Letter to William Courtney, Esq. on the subject of the Chancery Commission, by John Herman Merivale, Esq. London, 1827." 8vo. pp. 187.

Lord Redesdale; but he appears labouring under a desire to approach the more vital complaints of the court, and yet some secret reasons and preventive motives overcome his resolution, which ends in a volcano of words.

The suggestions of the Commissioners for the reform of the Court are so ill arranged and diffusive, and so entirely without systematical or analytical principle that the following selection and classification of the chief corrective propositions, may be extracted as their most important recommendation :—

EXAMINATION OF WITNESSES.

42.—That the Examiners of the Court of Chancery shall, in future, have power to administer the oath to all witnesses produced before them for examination, as fully and effectually as the same is now administered by the Masters of the Court.

43.—That the same Examiner be at liberty to cross-examine as well as to examine, the same witness.

47.—That it would be expedient that commissions for the examination of witnesses in the country, should no longer be directed to Commissioners named by the parties; but that the Lord High Chancellor should nominate or appoint a certain number of persons, at his discretion, being resident in London, and Barristers of not less than five years standing, to act as Commissioners in the country, at any distance from London exceeding twenty miles, and not exceeding such greater distance as shall, from time to time, appear to the Lord Chancellor to be expedient in that behalf: and that all such commissions should be directed to, and executed by, one of the persons so to be nominated and appointed, unless it should happen that, at the time of applying for any such commission, all the said persons should be actually engaged

in the execution of other country commissions previously issued.

50.—That in order to secure the competent execution of all commissions in the country, whether within or beyond the limits to be prescribed by the Lord High Chancellor, as aforesaid, the remuneration to be paid to the acting commissioners should be after the rate of five guineas per diem, which as to the commissioners sent from London, but not as to the commissioners resident in the country, should include the time of travelling, computed at the rate of seventy miles per diem; and that each acting commissioner should also be paid an addition of one shilling for each mile of distance which he shall necessarily travel for the purpose of such commission; but the five guineas per diem so paid to the acting commissioner, should include the expence of lodging and maintenance.

MASTERS' OFFICE.

66.—That every Master do enter, in a book to be kept by him for that purpose, the name or title of every cause or matter referred to him, and the time when the decree or order is brought into his office, and the date and description of every subsequent step taken before him in the same cause or matter, and the attendance or non-attendance of the several parties, upon each of such steps; so that such book may exhibit, at one view, the whole course of proceeding which is had before him, in each particular case.

67.—That upon the bringing in of every decree or order, the Master do issue his warrant to the solicitor bringing in the same, appointing a time to consider the matter of the said decree or order, and requiring him not only to serve the same upon the Clerk in Court of the respective parties, but also to give immediate notice to the several parties in the cause, of the time so appointed.

68.—That, at the time so appointed for considering the matter of the said decree or order, the master do proceed to regulate, as far as may be, the manner of its execution; as, for example, to state what parties are entitled to attend future proceedings, to direct the necessary advertisements, and to point out which of the several proceedings may be properly going on *pari passu*, and as to what particular matters interrogatories for the examination of the parties appear to be necessary, and whether the matters requiring evidence shall be proved by affidavit or by examination of witnesses; and in the latter case, if necessary, to issue his certificate for a commission, and if the Master should think it expedient so to do, he should then fix a certain time or times, within which the parties are to take any certain proceeding or proceedings before him.

69.—That, upon any subsequent attendance before him, in the same cause or matter, the Master, if he thinks it expedient so to do, shall fix a certain time or times, within which the parties are to take any other proceeding or proceedings before him.

74.—That upon any application made by any person to the Court, whether to obtain the conduct of a cause upon the ground of delay in the party prosecuting the decree or order, or for any other purpose, the Master, if required by the person making the application, shall certify to the Court the several proceedings which shall have been had in his office in the same cause or matter, and the dates thereof.

75.—That upon every general report, or report in the nature of a general report, made by the Master to the Court, in any cause or matter hereafter referred, the Master shall, at the foot of his report, certify whether the decree or order has or has not been prosecuted with reasonable diligence; and if he shall be of opinion that reasonable diligence has not been used, then he shall certify the grounds of such

opinion to the Court, making such observations thereon as he may think fit.

76.—That every Master be at liberty, without order, to proceed in all matters *de die in diem*, at his discretion.

77.—That every warrant for attendance before the Master shall be considered as peremptory, and the Master shall be at liberty to continue the attendance beyond the hour, and during such time as he thinks proper, giving previous notice in the warrant, of his intention so to do; and that he be empowered to increase the fee for the solicitors' attendance in proportion to the time actually occupied.

82.—That it shall be competent to the Master, if, from the nature or extent of the accounts directed to be taken, it be expedient so to do, to refer the same or any branch thereof, with the consent of the parties interested, to some accountant or other person; and the result of such account, as found by such accountant or other person, shall be stated by the Master in his report, in the same manner as if the account had been taken by himself; and it shall not be competent to any party to object to the said account before the Master, or to take exceptions to the report thereupon, upon any other ground than such as they might have proceeded upon, if the account had been taken before the Master.

95.—That the Master be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories, or *viva voce*, or both, as the nature of the case may appear to him to require; the evidence upon such examination being taken down at the time by the Master, or by the Master's clerk in his presence, and preserved, in order that the same may be used by the Court if necessary.

106.—That every solicitor be at liberty to register, in a book to be kept in the public office for that purpose, the name or names of one or two sufficient clerk or clerks, to be approved of by the Master of the day, for the purpose of

attending all proceedings in the Master's offices which he does not attend in person, or by his clerk in court; and that the Masters be at liberty to disallow the attendance of any clerk who is not so registered. And in all cases the Master is to be at liberty to call for the attendance of the solicitor himself, if he thinks fit.

107.—That, if at any time it shall become necessary, for any special reason shown to the Master of the day, for a solicitor to appoint any other clerk for the above purpose, he be required forthwith to register in the said book such other clerk, to be approved of by the Master of the day.

108.—That, if more than one clerk be so registered, the same clerk who may have commenced attending upon any distinct branch or subject of proceeding before either of the Masters, be required to continue his individual attendance, until such separate matter be completed, unless some special reason be shown to and allowed by the Master to the contrary.

110.—That it is expedient that the Masters be, in future, paid partly by salaries and partly by fees.

111.—That it is expedient that the Masters should cease to receive profit from copy money.

112.—That it is expedient that the suitors in the Court of Chancery should continue to pay proper and reasonable fees for copies and proceedings in the Master's offices.

113.—That in future all copies in the Master's office be paid for at the rate of 4d. per folio only.

114.—That no party be in future required to take any copy from the Master's office, unless where necessary for the due proceeding in the matter depending before him, and that the Master's judgment in that respect be final.

115.—That in the taxation of costs of suit, either between party and party, or between solicitor and client, no person be allowed the costs of the copy of any paper or document originating in the Master's office, or brought in before him,

unless such copy shall have been either made in the Master's office, or transcribed from a copy made therein, and taken by the party claiming to be allowed the costs of such second or other copy.

116.—That it would be expedient that the practice of receiving gratuities by the clerks in the offices of the Masters of the Court, should be discontinued; and that, in lieu thereof, a liberal remuneration should be secured to them, bearing a just proportion to the business actually done by him.

COMMISSIONS TO EXAMINE WITNESSES IN SUITS AT COMMON LAW.

164.—That the present rule, that the courts of law cannot, on an action at law, award a commission for the examination of witnesses who are resident abroad, unless the party not seeking the commission consents to the application, and the necessary consequence that the party desiring such commission is compelled to resort to a Court of Equity in order to obtain it, where the other party does not give his consent—appears to us to occasion delay and expence, which may well be avoided; and that in future the judges at law should be invested with full authority, at their discretion, to award such commission, at the request of plaintiff or defendant, although the other party do not consent thereto; and that such commission should no longer be awarded by Courts of Equity, unless in cases where the actual purpose of the bill is to obtain a discovery also; and such purpose shall be verified by an affidavit to be annexed to the bill.

SOLICITORS AND COUNSEL.

167.—That no Counsel do prepare or settle a bill without written instructions from the Solicitor; and that the signature of Counsel to a bill be in future considered as a certifi-

cate that, assuming the instructions to be correct, it is not unfit that a bill should be filed.

139.—That, it being in the power of the Court to order a further argument where it shall appear expedient, no more than two counsel shall be heard for each party, in any cause or other matter, unless there be two or more defendants in the same interest, and there each of such defendants shall be at liberty to name one counsel, and no more: and the present practice of not allowing in the taxation of costs as between party and party, the costs of the two counsel, where both are selected from the outer bar, shall no longer obtain.

NEW BANKRUPT COURT.

166.—That the Lord High Chancellor shall select ten or more persons at his discretion out of the fourteen lists of Commissioners of Bankrupt acting in the execution of commissions in London, for the purpose of sitting as Commissioners of Appeal from the decisions of all London Commissioners, and three of such persons taken by rotation shall sit once in each week, or oftener, if upon experience it shall appear to the Lord Chancellor to be necessary, and at such hours as the Lord Chancellor shall please to appoint.

167.—That all matters which are now the subject of appeal to the Lord Chancellor, from the decisions of the Commissioners acting in the execution of commissions in London, shall in future be first heard by the Commissioners of Appeal, who shall simply affirm or disaffirm the prior decision, without stating particular conclusions, either as to the matter of fact, or matter of law.

168.—That the Commissioners of Appeal shall proceed by *vivâ voce* examination of witnesses, unless under special circumstances it should appear to them to be expedient to receive testimony by affidavit.

170.—That any party dissatisfied with the judgment of the Commissioners of Appeal, shall be at liberty to review

the same by petition before the Lord Chancellor, unless the subject of appeal be a matter of property under the value of £50., and such appeal shall be heard and decided by the Lord Chancellor; but no appeal shall be permitted against the judgment of the Commissioners of Appeal upon the subject of costs alone.

173.—That no London Commissioner of Bankrupt shall be at liberty to act as Counsel for any party, either before the general Commissioners, acting in the execution of a commission, or before the Commissioners of Appeal to be appointed as aforesaid.

APPEALS.

174.—That, in order to give more weight and efficiency to the office of Vice Chancellor of England, it would be expedient that so much of the statute of the 53rd year of the late King, chapter 24, as limits the power of the Vice Chancellor to the hearing and determining of such causes, matters, and things only, as the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, shall from time to time direct, should be repealed; and that from henceforth the same independent jurisdiction should be exercised by the Vice Chancellor as is now exercised by the Master of the Rolls, &c.

175.—That it would be further expedient that the Lord Chancellor, the Lord Keeper, or Lords Commissioners for the custody of the Great Seal, should still have full power and authority to direct that, any cause, matter, or thing which is set down, or brought on for hearing before him or them, should, at his or their pleasure, be heard and determined by the Vice Chancellor, but so as not to give authority to the Vice Chancellor to reverse or alter any decree or order made by the Master of the Rolls.

176.—That where an order is pronounced by the Master of the Rolls or Vice Chancellor upon a motion, or where the

Master of the Rolls or the Vice Chancellor decline to make an order upon a motion, no party shall be at liberty to appeal, as at present, from such order, by a motion to be made before the Lord High Chancellor, unless, before notice of such motion be served upon the opposite party, in cases where such motion is made after appearance of such party, the motion paper be countersigned by a counsel, who shall add thereto a certificate, in the following words:—" I certify to the Lord Chancellor that, in my judgment the application of which the above notice is intended to be given with reference to the nature of the matter to which it relates, is fit and proper to be made to the Lord Chancellor."

177.—That no appeal to the Lord High Chancellor from any decree or order made by the Master of the Rolls or the Vice Chancellor, be permitted, unless the petition for such appeal be presented within six months from the time of such decree or order pronounced.

178.—That the Master of the Rolls or the Vice Chancellor be at liberty to discharge or vary any order, *of course*, made, upon any petition or motion, by the Lord High Chancellor, or by each other respectively.

179.—That no re-hearing of any cause or matter before the same judge be granted, unless the petition for the same be presented within one year after the decree or order pronounced.

180.—That in all cases of reference for scandal or impertinence, or for the insufficiency of answers or examinations, where the Master shall certify that it is a fit case for exception to his report, there the party, if he takes an exception accordingly, shall set down the same to be heard, either before the Master of the Rolls or the Vice Chancellor, whose decision thereon shall be final.

181.—That all other decisions of the Master of the Rolls and the Vice Chancellor shall be open to one appeal;

which, at the election of the appellant, may be either to the Lord High Chancellor or to the House of Lords, unless upon the hearing of an appeal before the Lord High Chancellor, his Lordship shall think fit to suggest the propriety of an appeal to the House of Lords; but no party is to be at liberty to apply to the Lord Chancellor for such further hearing or appeal.

182.—That all appeals from the decisions of the Master of the Rolls and the Vice Chancellor to the Lord Chancellor, shall be heard and disposed of upon the same evidence as was used or read before the Master of the Rolls and Vice Chancellor, and upon no other or additional evidence, unless the appeal be on account of the rejection or admission of evidence.

To these may be added, the proposed alterations in the practice for rendering more speedy the processes for procuring the appearance of refractory defendants, and for compelling the prosecution of suits by *mala fide* plaintiffs, the details of which are however too long for extract. The greater number of these propositions have been truly described as “not tending to produce any sensible improvement of the court, except so far as they are expedients in detail for preventing the grievance from growing, as is the nature of all grievances, continually worse; and merely pruning the luxuriance of the evils, but injuring none of its roots.” The important question as to the preferable *mode* of taking evidence is not only unexamined by the Commissioners, but a most contradictory position is assumed by them in their evident preference of examination by interrogatories, and yet giving a recommendation that the Master should examine witnesses *vivâ voce* as he sees cause, and that

the proposed new court of Bankruptcy appeals should proceed on *viva voce* evidence!

Such are the most important corrective suggestions of the Commissioners; and the selection at the same time displays their views of the principal defects of the court. The Report however, which precedes the remedial Propositions and Explanatory Paper, is so entirely wanting in analytical exposition of the causes and remedies of the abuses that a particular examination of every clause and proposal would fill a volume. In the following chapter therefore a more clear investigation will be attempted, which will comprehend occasional reference to and remarks upon the labours of the Commissioners. It is far from being insinuated that this Commission has not afforded most valuable aid towards the future improvement of the Equity Jurisdiction. The body of evidence alone is a mass of important information and suggestion; and the original papers of the Commissioners contain many useful contributions towards the future reformation of the Court; but it is unquestionable that the powers of the Commission were *restricted*, that the Commissioners were not, as a body, likely to effect even its limited objects, and that consequently they could not satisfy the public, or accomplish the reform of the Court of Chancery. Sir John Leach was unfortunately frequently absent from indisposition, and most of his effective propositions were rejected. It has been officially declared that Lord Eldon "abstained from taking any active part in the conduct of the proceedings," and yet by his frequent attendance at the discussion of the Report he could not but embarrass and prevent the unrestricted expression of the Commissioners' opinions. Lord Redesdale attended but few meetings of the Commission, and was rarely

present at the consideration of the Report. Mr. Justice Littledale having been early elevated to the Bench took no part in the proceedings. Dr. Lushington was an advocate of the Civil Courts, and Sir N. C. Tindal a Common-law advocate; all the other Commissioners were judges or officers of the courts of Equity, excepting three Chancery barristers who were immersed in the private avocations of professional business! The experience and personal labours of Mr. Beames are entitled to great respect and honorable mention, but it was impossible that *such* an exclusive Commission could accomplish the ends of the enquiry.

On the 28th February last, Lord Lyndhurst, then Sir John Copley, Master of the Rolls, introduced into the House of Commons, as the result and legislative proposition of this Commission, a Bill entitled "For the Improvement of the Administration of Justice in the High Court of Chancery of England." A detailed examination of the principle and proposed enactments of this bill was intended in these pages, but as it appears to have died a natural death in the political changes of the month of April, the necessity of such examination has ceased. Its second reading on the 4th of May, not having taken place, nor even its existence being so much as noticed, surely indicates that it was the bill of the *former* not the *present* Lord Chancellor!

This notable Bill shortly enacted that a schedule of Orders and Rules, in number 145, "shall henceforth become *Orders* and *Rules* of the Court of Chancery." The appeal from the Vice Chancellor to the Lord Chancellor was taken away. The remuneration of the Masters by a fixed salary instead of fees was intended: the Chancellor was empowered to cause Writs of Habeas Corpus to be returnable before the Judges: the juris-

diction of the Court of Chancery in regard to Friendly Societies was repealed, and the powers of Lord Keeper and Lords Commissioners of the Great Seal were assimilated with those of the Lord Chancellor. Such, in brief, was the nature and extent of the Bill for the improvement of the administration of Justice in the High Court of Chancery in England! The mere statement of its provisions betrays the total inadequacy of this intended legislative measure. A general and not improbable rumour prevailed in the legal world that the bill was a temporary and experimental enactment for the remainder of Lord Eldon's chancellorship, and that on the termination of his career a more efficient plan would be introduced into parliament and adopted. The abandonment of this bill, consequent on the resignation of Lord Eldon, certainly confirms the rumour; and the recent reported declaration of Lord Lyndhurst in the Upper House proves that his Lordship is aware of the inadequacy of his recent propositions in the Lower House: his declaration referred to was on the occasion of the appointment of a Deputy Speaker of the Lords, on the 7th of May last, when in the course of the discussion on the pressure of business in the court of Chancery, Lord Lyndhurst said "*if their Lordships would grant him the indulgence which, he thought, he might in justice require, he would pledge himself before the next Session, to perfect a plan, with reference to the business of his office, that should secure its performance regularly, faithfully and accurately.*"* This declaration is equivalent to an admission that the Bill introduced by Sir John Copley does not meet the views of Lord Lyndhurst for the reform of the Courts of Equity.

* Morning Chronicle. Debates, 8th May, 1827.

The journals of the Commons, and the Parliamentary Debates would furnish voluminous details of various legislative measures during the last two reigns affecting the law, but no record of any comprehensive judicial improvements. Their citation is therefore altogether omitted, and the few important propositions and matters of fact are comprised in the more full and accurate information obtained in the recent enquiries and Commissions.

The reform and improvement of the Court of Chancery was not only entirely suspended in the reign of George III. and during the last chancellorship, but Lord Eldon did not even revise, add to, or regulate the technical practice of the Court by the enactment of orders, by means of which his predecessors indisputably preserved the proceedings of the court in some degree from the accumulation of delay and expence. He not only failed to remedy new evils by additional preventive orders, but he did not even regulate the operation of the orders framed by his predecessors. This point the Commissioners tenderly press against Lord Eldon in the following extract from their Report. "There are
 "many other detached orders upon insulated parts of
 "the practice, and upon the fees of the officers of the
 "court; but these orders have not introduced any alter-
 "ations in the general system, nor essentially in the
 "practice of the court. And when we observe how
 "many years have elapsed since that body of orders
 "was framed, it can be no matter of surprise, that
 "many of the orders which still regulate the course of
 "proceeding are not perfectly adapted to the character
 "of much of the business, which the increased wealth
 "and commerce of the country have thrown upon this

“ court of chancery, or the different circumstances under which the country is now placed.”*

It requires therefore no further evidence or argument to prove that in as much as no improvement has yet been effected in the Equity Jurisdictions, the evils must have increased—*Non progredi est regredi*.

Of the numerous acts of Parliament however, relating to the law, and judicial system of England, several important Statutes for the establishment and government of the SUITORS' FUND require a particular notice.

The Suitors' Fund was originally established by Statute 12 George I., c. 33, entitled “ an act for Relief of the Suitors of the High Court of Chancery,” to reimburse the suitors by a stamp duty for the deficiencies and malversations of the Masters, before detailed in that reign. After those claims had been discharged it was provided that the overplus of the fund should be reserved and accumulate “ for the benefit of the Public” according to the future direction of the Parliament.

* Report, p. 16.—And it is not a little curious that the Senior Master, Mr. Stratford, a *Philo-Prynne*, who in his recent pamphlet “ The Sovereignty of the Great Seal,” contends for the prerogative and divine right alone of the Lord Chancellor to legislate for the evils of the Court, thus pointedly declares in his official return to the Commission the culpable negligence of Lord Eldon in *not* improving his Court:—“ It is a matter of great regret, “ looking to the circumstance that the more material ordinances heretofore “ made for the regulation of the several offices of the Court of Chancery, “ were made by the Lord High Chancellors for the time being, or persons “ holding the great Seal, from the time of Lord Bacon downward, not for “ getting even the time of the Protectorate, and much less the times of “ Lord Clarendon and Lord Nottingham; and looking also not only to “ the learning, but to the experience and the wisdom of the present Lord “ Chancellor (Eldon), that he had not followed the example of his great “ predecessors, and of himself determined what alterations in the practice “ of the several offices of the court may now be usefully made, and ordained accordingly.” *Chancery Report. Appendix B, p. 507.*

By the 12th George II., c. 24, the Court of Chancery was empowered to lay out upon proper securities any part of the suitors' fund not exceeding £35,000, and to apply the interest towards defraying the charges of the new office of Accountant General of the court. The Statute 4 George III., c. 32, granted a further sum of £5,000, the interest to be applied in augmentation of the Accountant General's Salary in lieu of all fees. An act 5 George III., c. 28, invested a sum of £80,000 for the increase of the salaries of the Masters £200 per annum each. The Salaries of the Accountant General and his sub-officers were further increased by 9 George III., c. 19, in the additional investment of £20,000. In 1774 the public offices of the Chancery Six Clerks, the Registrar and Accountant General were rebuilt out of the monies of the suitors' fund;* and in the following year an act vested in the Accountant General and his successors part of the garden of the society of Lincoln's Inn for the scite of those offices.† A succeeding Statute applied a further portion of the fund for rebuilding the offices of the Six Clerks in Lincoln's Inn garden, instead of Chancery Lane.‡ In 1777, a statute further regulated the disposition of this fund and the method of granting leases of the Rolls' estate.¶ In 1792 another sum of £300,000 of the Suitors' fund was appropriated by act of parliament and placed out on security, and the interest applied towards the expences of the office of Accountant General, for building offices for the Masters in ordinary in Chancery, and public offices and record depositaries for the Secretaries of the Bankrupts and Lunatics.||

* 14 Geo. III., c. 43.

† 15 Geo. III., c. 22.,

‡ Ibid., c. 56.

¶ 17 Geo. III., c. 59.

|| 32 Geo. III., c. 42.

In 1809 stipends and retiring pensions were provided out of the Suitors' Fund for the two senior Registrars, the clerks in the Registrar's office, and the Master of the Report office; and further salaries for additional clerks in the Report office.*

In 1810 another sum of £200,000 was appropriated for building offices for the Examiners, Cursitors, Clerks of the Crown and Petty Bag office; for making provision for such of the Examiners, Deputy Examiners and Clerks incapacitated by age or infirmity, and for other payments to several of those officers.†

In 1813 recourse was again had to the funds of the Suitors "lying unemployed in the Bank" in the investment of £60,000 for payment out of the interest monies of the salaries of the Vice Chancellor and his under officers.‡

These, and various other charges have been from time to time grafted on this growing and convenient fund; and it cannot be denied that the funds of the officers of the Court of Chancery have at all events been comfortably increased by these numerous statutes, although a corresponding benefit may not have been reaped by the Suitors. A considerable mystery hangs over the growth, extent and use of the *Suitors' Fund*, which now amounts to a great and increasing sum. In 1826 the principal monies of the whole fund were above a MILLION sterling, vested in Bank 3 per cent. and *Reduced Annuities*, (an appropriate name for such an investment) the annual interest of which was then £51,626. 14s. 7d. and with an annual payment to the fund of £2,560. (obliga-

* 49 Geo. III., c. 119.

† 50 Geo. III., c. 114.

‡ 53 Geo. III., c. 24.

tory on the Lord Chancellor by Statute 55 George III. c. 25.) formed a total income of £54,126. 14s. 7d. The annual charges on the fund are as follows:—

	£.	s.	d.
The Vice Chancellor - - - - -	5,000	0	0
Eleven Masters - - - - -	6,600	0	0
Two ditto retired - - - - -	3,000	0	0
Public office - - - - -	135	10	0
Accountant General's office - - - - -	6,500	0	0
Registrar's office - - - - -	3,410	0	0
Report office - - - - -	2,110	0	0
Examiners' and Petty Bag office - - - - -	2,924	12	5
Vice Chancellor's Assistants - - - - -	800	0	0
	<hr/> £50,480 2 5 <hr/>		

A yearly surplus therefore of £23,646. 12s. 2d. exists.* With such an accumulation of principal and interest belonging to *nobody*, there are surely ample pecuniary means in aid of an improved system of remunerating the officers of this voracious court, and for the effecting of various reforms where *compensations* now only stand in the way.

Although no general legislative measures were taken for the reform of the law during the reign of George III., two Parliamentary *Reports* require an especial mention and peculiar commendation. The first, dated 9th April, 1794, is a "Report from the Committee of the House of Commons appointed to inspect the Lords' Journals in relation to their proceedings on the trial of Warren Hastings, Esq. and to report what they find therein to

* Chancery Report, Appendix D. p. 1146.

the House, and particularly to report the several matters which have occurred since the commencement of the said Prosecution, and which have in their opinion, contributed to the duration thereof to the present time, with their observations thereon." This valuable document is generally believed to be the almost exclusive production of Mr. Burke.* A short and critical account is given of its spirit and contents in Mill's History of British India, which may rank with the most original and valuable historical works of the present age. Mr. Mill there speaks of the Report in question as follows:—"It is a criticism not only upon this trial, but upon the law; a thing, in this country, of great rarity, from a source of high authority. It would also be a thing of great utility, if it would show the people of the country, what they have been carefully disciplined not to believe, that no greater service can be rendered to the community, than to expose the abuses of the law; without which the hope of its amendment is for ever excluded. The view is incomplete, and but superficial, which Mr. Burke, who was the author of the document, takes, even of that small portion of the mass of abuses, of which he had occasion to complain. He neither stretched his eye to the whole of the subject, nor did he carry its vision to the bottom. He was afraid. He was not a man to explore a new and dangerous path without associates. * * * * Acutely sensible however to the spur of the occasion, he felt the abuses which crossed him in his path. These he has displayed with his usual felicity of language; and these, it is of importance, with respect to the imitative herd of mankind to have stamped with the seal of his repro-

* See a Reprint in 4to. ed. 1821. Burke's Works, vol. vii. p. 537.

"bation."* The evils, and some few of the causes of judicial delays, are exposed in this report. The value of *publicity* in all judicial matters is distinctly acknowledged and recommended; and it is boldly averred that "*a miserable servitude exists wherever the law is uncertain or unknown.*" Some important and valuable observations are made on the rules for exclusion of evidence, and the Committee denounce the irrational *legal technicalities*, "supposed strict and inflexible rules of proceeding and of evidence, which appeared to them destructive of all the means and ends of justice." This Report, printed by order of Parliament, was afterwards published by Debrett in a small octavo pamphlet; and in that shape, Lord Thurlow, in a debate in the House of Lords, 22nd May, 1794, alluded to the publication (it not being *etiquette* to notice in one house the proceedings of another) and denounced it as "a pamphlet published by one Debrett, and which had that day been put into his hands, reflecting highly upon the judges and members of that house; it was disgraceful and indecent, such as he thought ought never to pass unpunished!" Thus by a *fiction* this Ex-Chancellor mendaciously spoke of a report of a committee of the House of Commons, which though superficial and by no means going to the root of the evils of law, yet was a most creditable production for such an assembly at such a period. On the day after this speech, delivered by Lord Thurlow in the Lords, Burke noticed the side wind attack on the committee and himself, and vindicated the report which he stated was "deliberately made."† The Report and

* Mill's *British India*, ed. 1820, vol v. p. 231.

† History of Warren Hastings's Trial, part. vii. p. 117, 118.

these concurrent proceedings are well worth perusal by all who feel interested in the past or present efforts to improve the Laws of England.

The increase of the Statutes in the reign of George III. has been almost incredible. *Nine thousand nine hundred and eighty* distinct Public enactments have been added; and five thousand two hundred and fifty-seven Private Acts! In the seven years of the present reign a similar multiplication is taking place: one thousand seven hundred and thirty-three Public and three hundred and sixty Private Acts have been already passed! Some future observations will be made on this great evil, and on the total want of consolidation of the written law and means of reference to its voluminous and confused details. It is however most agreeable to record in this chapter, the valuable Parliamentary "Report from the Committee upon Temporary Laws, Expired or Expiring,"* delivered to the House of Commons, May 12th, 1796, the chief labour and composition of which is generally ascribed, with corresponding praise, to the late speaker, Mr. Charles Abbott, now Lord Colchester. To the expositions and recommendations of this Report,† the public are probably indebted for the subsequent partial publication of the Statutes at large,‡ and for the few legislative measures of repeal and consolidation introduced into Parliament, during the last few years, and so laudably continued by Mr. Peel.

* See the reprinted Edition of the Commons' Reports, vol. xiv. p. 34.

† Extracts in Appendix, No. 7.

‡ The Statutes from Magna Charta to 1714, 9 vols. with Alphabetical Index, prepared by the Record Commissioners.

Such is the brief history of the English Chancery, which for centuries has been designated, with what justice the reader will judge, as the **INFERNAL COURT**. Such also as here narrated were the personal and judicial characters of its Chancellors, notwithstanding an eminent legal writer has asserted that "*the Chancellor always is, and must be, of transcendent talent!*"* These pages indisputably prove that the abuses of the jurisdiction are inherent in the **SYSTEM**, that the evils have been continually increasing, and that every remedial attempt has been hitherto abortive. Lawyers, Historians and Divines have alike recorded and protested against the miseries endured by the "unhappy suitors;" and Warburton, the great heresiarch, emphatically said that he should rather hear the last trumpet sound to announce the final judgment of mankind, than be involved in a suit in the Court of Chancery.†

The contemporary Reporters of the two reigns are as follows:—

GEORGE III.—1760.

Acton (Appeal Cases), 49, 50	Blackstone, Sir W. (K. B. & C. P.), 1 to 20
Ambler (<i>Chan. and Exch.</i>), 1 to 24	Blackstone (C. P. and Exch. Chamb.), 28 to 36
Anstruther (Exch.) 32 to 37	Bligh (Appeals, H. of Lords)
Ball and Beatty (Irish Chan.) 47 to 51	Bosanquet and Puller (C. P. Exchequer and Chancery), 37 to 44
Barneswall & Alderson (K.B.), 58 to 60	

* Maddock's Treatise. pref. p. xi.

† "The Law is eternal. But we poor mortals have an end: and, with it, all our miseries; of which a law-suit is not the least." Warburton. *Letters to Hurd*. Letter LV.

- Bosanquet and Puller's new Reports (C. P. and Exch. Chamb.) 44 to 47
 Broderip & Bingham (C. P.), 59 to 60
 Brown (*Chancery*), 18 to 34
 Brown (Parliamentary cases), 1 to 40
 Buck (*Bankruptcy*), 56 to 60
 Burrow (K. B.), 1 to 12
 Burrow (Settlement Cases, K. B.), 1 to 16
 Caldecot (Settlement Cases, K. B.), 17 to 26
 Campbell (Nisi Prius, (K. B. C. P. and Home Circuit), 47 to 55
 Cases of Practice (K. B.), 1 to 14
 Chitty (K. B.), 47 to 60
 Cooper (*Chancery*), 55
 Corbett & Daniel (Elections before Committees of the H. C.)
 Cowper (K. B.) 14 to 18
 Cox (*Chancery*), 23 to 36
 Dickens (*Chancery*), 1 to 38
 Douglass (K. B.), 19 to 21
 Dodson (Admiralty), 51 to 55
 Dow (House of Lords), 53 to 58
 Durnford and East (K. B.), 26 to 40
 East (K. B.), 41 to 52
 Edwards (Admiralty), 48, 49
 Eden (*Chancery*), 1 to 7
 Espinasse (Nisi Prius, K. B. C. P. and Home Cir.), 33 to 47
 Forrest (Exchequer), 41
 Fraser (Elections before Committees, House of Commons), 32
 Gow (Nisi Prius, C. P.) 59 and 60
 Haggard (Consistory Court), 29 to 60
 Holt (Nisi Prius, C. P. and North Cir.), 55 to 58
 Jacob and Walker (*Chan.*), 60
 Kenyon (K. B. &c.)
 Leach's Crown cases, 1 to 55
 Loft (K. B. C. P. & *Chan.*), 12 to 14
 Luders (Elections before Committees, H. C.), 25 to 30
 Marshall's (C. P.), 54 to 67
 Maddock (*Vice Chancellor*), 55 to 60
 Maule and Selwyn (K. B.), 53 to 58
 Merivale (*Chancery*), 55 to 58
 Moore (C. P.), 57 to 60
 Nolan (K. B.), 32 to 34
 Parker (Exchequer), 1 to 6
 Peake (Nisi Prius, K. B.), 30 to 35
 Peckwell (Elections before Committees, H. Commons), 45, 46
 Phillimore (Ecclesiastical), 48 to 60
 Price (Exchequer), 54 to 60
 Robinson (Admiralty), 39 to 48
 Rose (*Bankruptcy*), 50 to 56
 Schoales and Lefroy (Irish *Chan.*), 42 to 44
 Smith (K. B. and *Chancery*), 44 to 46
 Starkie (Nisi Prius, K. B. C. P. and North Cir.), 55 to 59
 Swanston (*Chan.*), 58 to 60
 Taunton (C. P.), 48 to 57
 Vesey, jun. (*Chancery*), 29 to 52
 Vesey and Beames (*Chancery*), 51 to 54

Wilson (K. B. and C. P.), 1	Wilson (Exchequer), 57
to 14	Wightwick's Reports (Exch.),
Wilson (Chancery), 58 to 60	50 to 51

—◆—

GEORGE IV., 1820.

Addams (Ecclesiastical), 2 to	Dowling and Ryland (K. B.),
5	2 to 7
Barnewell and Alderson (K.	Glyn & Jameson (Bankruptcy)
B.), 1 to 3	Jacob and Walker (Chancery)
Barnewell and Cresswell (K.	Maddock (Vice Chancellor),
B.), 4 to 7	1 to 2
Broderip & Bingham (C. P.),	Moore (C. P.), 1 to 6
1 to 3	Phillimore (Ecclesiastical) 1,
Chitty (K. B.), 1 to 3	2
Daniels (Exchequer)	Price (Exchequer), 1 to 6
Dowling and Ryland (Nisi	Symons & Stuart (Vice Chan-
Prius, K. B. and Home	cellors), 2 to 7
Cir.), 2, 3	Wilson (Chancery) 1

CHAPTER XIII.

ON THE JURISDICTION OF THE COURT OF CHANCERY
AND ON THE PRACTICAL MEANS OF IMPROVING
ITS ADMINISTRATION OF JUSTICE.

It is difficult to discover by what means the Courts of Justice in England; usually termed Courts of Equity, have obtained the jurisdiction which they now exercise. Their authority and the extent of it have been subjects of much question; but time has given them full establishment, and the limits of their duty seem now to be in a great degree, though perhaps not completely ascertained. * * * It is not a very easy task to describe the jurisdiction of our Courts of Equity. Those who have attempted it have generally failed.—*Lord Redesdale's Treatise on Equity Pleadings*, ed. 1795, p. 1.

Equity thus depending, essentially, upon the particular circumstances of each individual case, *there can be no established rules and fixed precepts of equity laid down, without destroying its very essence and reducing it to a positive law.*—BLACKSTONE, *Commentaries*, vol. i. Introduction, sec. ii.

What Equity is, and how impossible in its very essence to be reduced to stated rules, hath been shewn in the preceding section.—*IBID.* Introduction, sec. iii.

Once more; it has been said that a Court of Equity is not bound by rules or precedents, but acts from the opinion of the judge, founded on the circumstances of every particular case. *Whereas the system of our courts of equity is a laboured connected system, governed by established rules, and bound down by precedents*, from which they do not depart, although the reason of some of them may perhaps be liable to objection!—BLACKSTONE, *Commentaries* vol. iii. c. 27.

THE chapters of this work have manifested that the rust of barbarism corrodes the vitals of English justice. When Erasmus had read one of our law books he is said to have pronounced the British Lawyers "*doctissimum*."

Genus indoctissimorum Hominum," or as Horace Walpole says, the Lawyers find Law in what no man else finds Sense.*

Of the *origin* of each particular Equity jurisdiction it is not pretended to treat, but an analytical and brief dissection of the principles and authority of the Court of Chancery will give the reader some insight into the nature and quantity of business before it, and of the means of a beneficial subdivision of the labour and jurisdictions. All the various jurisdictions of the English Court of Chancery are classed under the following heads:—

I. COMMON LAW JURISDICTION OF THE CHANCELLOR.	III. STATUTORY JURISDICTION OF THE CHANCELLOR.
II. EQUITY JURISDICTION OF THE CHANCELLOR.	IV. SPECIALLY DELEGATED JURISDICTION OF THE CHANCELLOR.

I.—Common Law Jurisdiction. The Chancellor is by the common law, invested with various powers. He is a privy counsellor, and prolocutor or speaker of the house of lords; patron of the King's livings, and has various common law jurisdictions, the subjects of discussion in the court of Chancery; but the examination of which is not the immediate object of the present en-

* *Leges Angliæ plenæ, sunt tricarum, ambiguitarum, sibi que contrariæ; fuerunt siquidem excogitatæ, atque sancitæ à Normannis, quibus nulla gens magis litigiosa, atque incoutroversiis machinaudis ac proferendis fallacior reperiri potest*—The Laws of England are full of tricks, doubts and contradictions; they were invented and introduced by the Normans, who were of all nations the most litigious, and the most subtle in inventing and carrying on litigation. PHILIP. HONOR.

quiry. They will be found particularized by Maddock.* Although bearing a small proportion to the equity jurisdiction they occupy a considerable portion of attention. The historical pages of this volume have it is presumed, by an accumulation of facts, indisputably proved the gross inconsistency of the union of the *political* and *judicial* characters. By their unnatural junction in an English Chancellor integrity is subject to constant temptation, if not to continual sacrifice. The aptitude of the judicial officer is greatly lessened by the political inroads on his time and the distraction of his attention. The *bench* and the *woolsack* might at least be so far separated as to sever the offices of chancellor and prolocutor of the house of lords. No single *reason* can be adduced for the presidency of the Peers being vested in the Lord Chancellor, which would not be fully answered by that Law-lord having a seat *virtute officii* in the upper house without the presidentship, by which the legislature would derive as much benefit from his simple character of legislator as from his present office of prolocutor. Nor can any valid reason be assigned why the Lord Chancellor should be necessarily and for general purposes a *cabinet minister*. If such a legal member of the ministerial and royal councils is necessary, why not select and appoint a law lord for the separate and more deliberate performance of such requisite duties? The *judicial* character of the chancellor surely cannot gain more by the *dignity* or political *power* arising from its connexion with the cabinet than it loses by dependence and distracted attention. The Chief Justices of the courts of King's Bench and Common Pleas, and the chief Baron of the Exchequer, better perform their judicial duties, and equally acquire public

* Treatise on the Principles and Practice of the High Court of Chancery, vol. i. chap. i.

respect in their personal and judicial characters, without being members of the cabinet; nay, without even any station in the house of lords. The decisions of Sir Charles Abbott were as sound and honest, and as satisfactory to the public as are those of Lord Tenterden. In short, every argument and constitutional objection to political connection and influence in the offices of Common Law Judges equally applies to the judges of the Courts of Equity—if possible in a stronger degree, in as much as the *property* of the subject is more extensively involved.* Every argument for the *permanency* of the judicial office bears equally on both classes of judges; in some respects still more on the Chancellor, since, as the business of his jurisdiction seems to be peculiarly subject to the law of gravitation, the evils of *change* are correspondingly aggravated. The same observation affects the lower offices under the *patronage* of the Lord Chancellor. On any resignation, removal or death of a chancellor, numerous important officers, however great their general aptitude, are summarily displaced, and persons certainly inexperienced, frequently ineligible, are preferred! If the retiring officers have not pensions they are cruelly used; and the consequence is, that few intelligent persons competent to discharge the duties of various important offices, will accept stations of such uncertain tenure: if they have pensions, an unnecessary and reprehensible cost is entailed on the nation. All these under officers should hold *quam diu bene se gesserint*.

II.—*Equity Jurisdiction*. This class of the duties of the Chancellor chiefly consists of Chancery suits,

* "The Suits determined every year in the Court of Chancery, are of much greater value with respect to the subjects' property, than the suits that are determined in all the other courts."—*Cooper's Treatise on Equity Pleading*. ed. 1808, pref. p. v.

and litigation properly so called ; or as simply arranged by Maddock under *six* heads :—

- | | |
|--------------------|--------------------------------|
| 1. <i>Accident</i> | 4. <i>Infants</i> |
| 2. <i>Account</i> | 5. <i>Specific Performance</i> |
| 3. <i>Fraud</i> | 6. <i>Trusts.</i> |

The great increase of this branch of the jurisdiction is evinced in the following "Account of the number of Bills filed in the years 1799, 1800, and 1801, 1821, 1822, and 1825"—* viz.

1799	-	-	-	-	-	-	-	-	1,295
1800	-	-	-	-	-	-	-	-	1,394
1801	-	-	-	-	-	-	-	-	1,332

An Account of Bills filed from the first day of Trinity Term, 1821, to the last day of Easter Term, 1822, both days inclusive ~ - 2,202

The like Account, from the first day of Trinity Term, 1822, to the last day of Easter Term, 1823 - - - - - 2,286

The like Account, from the first day of Trinity Term, 1823, to the last day of Easter Term, 1824 - - - - - 2,338

A parliamentary return of the comparative number of Decrees, Dismissions on Hearing, and Dismissions for want of Prosecution, in the court of Chancery, also displays the same increase.

	Decrees.		Dismissions.		Dismissions for want of Prosecution.
1800	— 266	—	25	—	88
1823	— 446	—	31	—	168

* See Chancery Commission, Appendix D. No. 2.

In the year 1799 the number of Common and Special Injunctions was 34; for a similar period in 1821 they were 174; and in 1823 upwards of 200.

Now, in the examination of this extensive and various jurisdiction of the Court of Chancery it is impossible not to perceive the improvement which would result from numerous and practicable reforms tending to remove the CAUSES of litigation; or in other words lessening the subjects of equity jurisdiction. The state of the *English Laws of Real Property* immediately presents itself as an important and needful object for examination and improvement. The bold and useful publication by Mr. Humphreys on this subject is a recent and practical demonstration of the anomalous and defective state of those laws, and of the easy means of their improvement.* And how much this review and amendment would relieve the pressure of business in the Court of Chancery is acknowledged, though in a most cursory way by no means befitting its importance, in the Chancery Report: "Before, however, we close this part of the Report, we trust that we may be permitted to observe upon one other point, immediately connected with the subject of it. No person can have had much experience in courts of Equity, without feeling that many suits owe their origin to, and many others are greatly protracted by

* "Observations on the actual state of the Laws of Real Property; with the outlines of a Code. By James Humphreys, Esq. London, 1826."—A controversial reply to this work has been published by Mr. Sugden. It is lamentable to observe in his ill digested and prejudiced strictures on Mr. Humphreys's volume the effects of professional narrowness of mind in the same author who in his Appendix No. I, exhibits such an admirable outline and analysis of the system of conveyancing and law of real property.

“ questions arising from the niceties and subtleties of
 “ the law and practice of Conveyancing. Any altera-
 “ tion in this system must be made with the greatest
 “ caution ; but, as connected with the object of saving
 “ time and expense to suitors in the court of Chancery,
 “ we venture to submit to Your Majesty’s consideration,
 “ whether it might not be proper to commit to competent
 “ persons the task of examining this part of our Law,
 “ with a view to determining if any improvement may
 “ safely be made in it, which might lessen the expense,
 “ and narrow the field of litigation respecting the trans-
 “ fer of Property.*

Mr. Humphreys has clearly shewn that the laws of
 real property may be freed from various technical and
 unnecessary distinctions of tenure, nominal ownership
 and jurisdiction ; that the rules of succession may
 be more simple and uniform ; that the power of alie-
 nation might be less restrained, and its mode brought
 to bear more immediately on the object ; that nu-
 merous acts might be done and the object effected
 more *directly* with its real name and character, instead
 of adopting the present circuitous means of legal fiction
 and nominal interest ; consequently, that much equitable
 interference in such reforms would be entirely saved.
 All the absurdities originating in the feudal tenures,
 with their burdensome privileges might be advantage-
 ously and easily abolished. All the fictitious formulæ of
Uses and *Trusts* might be now safely exchanged for short
 and simple forms of the *history of a fact* instead of a
fiction : the doctrines of *Recoveries* and *Fines*, might give
 way to common sense, with the attendant consequence of
 a great saving of litigation, expence and delay. The

* Chancery Report, p. 34.

Copyhold tenures might be extinguished, or at all events greatly improved with equal justice and gain to the Manorial lord and Copyholder.* It is not within the province or space of this volume to specify or detail any plans for the improvement of the law of real property; but it is notorious that the difficulty of completing titles is annually and frightfully increasing. The obscurity and

* The following observations, from the prefaces of Watkins's *Treatise on Copyholds*, on the contradiction of cases and precedents, give rise to many reflections.—“He has endeavoured to extract something at least like consistency from the crude mass of matter which the books afford. He has even endeavoured to reconcile the jarring and discordant cases on several points which he had to consider; but this he must confess, sometimes appeared to be rather out of the reach of the powers usually allotted to humanity; and which he consequently could only lament. He has endeavoured also to reduce some cases to acknowledged principles, and to rescue others from the clouds of mystery in which they had been so long enwrapped. And if he has been *guilty* of unusual freedom in so doing, in calling in question the doctrines consecrated by time or by *authority* (as it is too frequently termed; as if anything could be an authority against truth!) but which perhaps, had nothing but time or such authority to consecrate them, he can only say that he is sorry that such freedom had not been exerted by others before him, rather than left unexerted ‘till so late a day.’—*Watkins on Copyholds*, vol. i. pref.

Again in the preface to the second volume Mr. Watkins states that “He has been brief; and, where the subject permitted him he has endeavoured to extract consistency. This he found however was not always even to be hoped for. He found reporter against reporter, and case against case. He found consequences continue when their causes had ceased. He found conclusions, which justly followed from premises which once existed, applied to instances in which those premises could not exist. He found arbitrary assertion adopted by servility, cherished by prejudice, and at length matured into doctrines whose law could not be questioned, but whose absurdity was too apparent to be denied. It must not, therefore, be wondered at, if, when so situated, he has in some instances, left the law in all its *glorious* uncertainty; and to such uncertainty must it always be subject, while we consider common sense as subservient to precedent, and suffer the blunders of one age to be the *criteria* of right in another.—*Ibid.* vol. ii. pref.

prolixity of conveyances and the forms of deeds are at variance with sense and the English language, and every other construction of written instruments. The customary accumulation of words and synonymous expressions, and the innumerable covenants and provisionary clauses are operose forms merely retained from custom, (handed down from father to son) chiefly from fear in the practitioner of deviating from precedent and the multitudes of *cases* and judicial decisions which perplex and puzzle. If conveyances, wills and all written instruments were construed in courts of law according to their plain and intended import, instead of with technical refinement to accommodate them to particular cases, or to reconcile them to obsolete principles of law, great advantages would result and torrents of litigation dry up. General and common covenants, for example, might be embodied in short Statutes, and a simple reference to the statute in all ordinary cases would save the special and verbal recital of the clause. Some of the most formidable, expensive and insuperable obstacles now attendant on perfecting titles are the difficulties of ascertaining and attesting the births, marriages and deaths of parties. Almost all *this* evil might be remedied by the establishment of *civil* parochial and local *Registers* for recording, under imperative acts of parliament, all births, marriages and deaths, instead of the present defective mode of clerical registry, where the records are ill kept, and continually exposed by ignorant parish clerks to falsification by erasure and addition. Numerous statutes have partially provided for this important object, and during the Protectorate a complete National Registry was established in every parish.* It has been recommended

* Scobell's Acts. Anno. 1653. chap. 6.

by many intelligent writers on various other accounts, but the *legal* advantages alone are sufficient to dictate its early legislative adoption.*

Another most important practicable remedial reform and preventive of litigation would result from the general establishment throughout the kingdom of a Registry of all titles and conveyances of land. The principle has most strangely encountered the opposition and prejudices of the "Country Gentlemen," a class of Englishmen always most sensitively alive to what they conceive to be their interest, but not equally informed in what that interest really consists. The great objection is the exposure of their affairs. Fortunately not theory only but experience proves the benefits of such Registries. They subsist, as already noticed, in Middlesex and Yorkshire. In Ireland the advantages are general and palpable. In Scotland the long practical experience of the register of lands for several hundred years, is most decidedly in favour of the principle, and the benefits are indisputable in the consequent simplicity of titles and the brevity of deeds.† The English public are reconciled to the publicity of recording wills, and the same good results would follow the establishment of registers of real property, viz. that all *useful* publicity would be accomplished, and injurious or idle curiosity would be unheard of. But admitting the existence of some evils in a general system of registry such as that contended for, how greatly do the benefits preponderate?

* See "Observations on Marriages, Baptisms and Burials, as preserved in Parochial Registers, &c. by Ralph Bigland, Esq. Somerset Herald. London, 1764" 4to.

† Stewart's Index and Abridgement of the Scotch Statutes, ed. 1702, p. 249, Art. *Registration*. See also Erskine's Principles of the Law of Scotland, book ii. tit. 3, *Of Hereditary Rights*.

The *Land Owner* would encrease the value of his property by simplifying and confirming the title to it, and by facilitating the means of settling, changing or selling it: the *Monied Man* would gain by the multiplication, certainty, and security of landed securities: the *Lawyer*, the practitioner of the craft, would gain, if he could but see it, by the decrease of his responsibility and the increased passage of property resulting from facility of transfer.* In various parts of the continent District Registers have been adopted, and in the United States of North America, aided by the simplicity of titles so recent, the advantages are universally adopted and acknowledged.

Is the system of registry beneficial in Middlesex and Yorkshire? and, if so, why should it not be extended throughout the kingdom? If the sanction of antiquity is sought, if the cry of *innovation* is the only reply to argument, a complete answer may be pleaded in ancient custom and the notoriety of the first acts of alienation of land. The original mode of transferring landed property was the most public, *coram paribus de vicineto*. "At first many
 "lands and estates were collated or bestowed by bare
 "word of mouth, without writing or charter, only with
 "the lords' sword or helmet, or a horn or a cup; and
 "very many times with a spur, with a currycomb, with

* "The troubles and hazards of titles must continually increase, until they are reduced to a greater certainty by a registry. But then as a registry would reduce the incertainty of titles, it must thereby take away the delays in conveyanceing, and consequently abridge the charges: for as the Pharisees made long prayers, as a pretence or equivalent for devouring widows houses: so practicers in the law must make out long bills, on pretence for demanding large fees: like some tooth drawers, who drag their patients by the jaws about the room, to shew them how hardly they earn their money. To cure a deficiency in titles would be as fatal to conveyancers, as the cure of a lame leg to a beggar.—*Asgill's Essay on a Registry for Lands*, 1720, 8vo. p. 22.

“ a bow, and some with an arrow : but these things were
 “ in the beginning of the Norman reign.” * In the
 early feoffments, livery of seizin was made *coram pari-*
bis de vicineto, who indorsed on the back of the deed
 their attestation of the name, place and time of trans-
 fer.†

Publicity was therefore originally the essential prin-
 ciple of all transfers and alienations of landed property;
 and secrecy a modern innovation. ‡ Gilbert in his learned
 Treatise of Tenures, says “ I have clearly explained
 “ the reason of those public ceremonies and acts of
 “ notoriety, required by the feudal law, for the acquiring
 “ possessing, and transferring of feuds, and which for-
 “ merly were equally requisite in our common law
 “ tenures, viz. liveries, attornments, &c.; the disuse
 “ whereof has not only occasioned an uncertainty in
 “ many titles and estates, but also introduced that mis-
 “ chievous practice of private and secret feoffments, by
 “ lease and release, covenants to uses, &c. and which in
 “ consequence, has introduced a deluge of perjuries,
 “ forgeries, and other corruptions over the common law,
 “ and which can never be rectified, or the mischief re-
 “ dressed, till the common law be, in that particular,
 “ restored to the antient method of passing estates *in*
 “ *pais*, or by some public act of notoriety.” The uses
 of Registration have been recently briefly set forth in

* Selden. *Janus Anglorum*, c. 3, p. 54.

† Blacket. *Com. b. 2.*—Dalrymple's Feudal Law.

‡ Indeed there may be said to have been of old a real Registry, for in
 the extreme ignorance of the Anglo-Saxon age, the County or Hundred
 Court was the place of all transfer of property. Deeds were scarce, and
 the most important are said to have been inserted in the blank leaves of the
 Pariah Bible, with an imprecation on all those who should be found guilty
 of falsifying them.—*Hicks. Dissert. Epist.*

an excellent review of Mr. Humphreys's volume by Mr. Bentham, * viz.—1. Security to the owner of an estate against accident, by preservation of documentary evidences from loss and destruction.—2. Protection to the public against fraud and depredation, by preserving deeds from falsification and preventing counterfeit documents.—3. Prevention of fraud on the part of the proprietor, in the publicity of prior incumbrances.—4. The national legislative advantages resulting.—The prejudices of the lawyers have frequently prevented the adoption of a general Registry. The last attempt to introduce it was in 1695, when a Bill for Registering all deeds, conveyances and wills was brought into Parliament: it did not, however, obtain a second reading: Oldmixon records the reason; it was “*obstructed by the Lawyers*” in the House of Commons, to use Bishop Kennet's terms, and the reason he gives for it, is much to the scandal of that profession, *because it tended to abridge Law Suits*, and would be to their prejudice: if they had no other reason for it, the House had better have parted with them than with the Bill.”†

Some quaint observations by Roger North, in his Life of Lord Keeper Guilford, deserve quotation, from the authority and argument they adduce in favour of a Registry of Titles. “He was extremely desirous that a Register of Titles to Land should be settled, and he worked seriously upon it. There were frequent attempts in Parliament to establish one; but none ever was presented to them tolerably digested; and so they came to nothing. And besides, the matter being a subject of great skill, as well as foresight, in

* Westminster Review, No xii. Art. 8.

† Oldmixon's History, vol. iii. p. 110.

“ the law, the gentlemen of the country are afraid, and
 “ hearken to the learned as when they settle their
 “ estates : and such learned gentlemen, admitting they
 “ were willing to it (as they are reputed, for the sake of
 “ interest in practice, not to be) they would be scrupu-
 “ lous enough ; but being averse, they raise a mist of
 “ scruple upon every such bill, and represent the possi-
 “ bility of frauds in the offices to be so dangerous to
 “ men’s titles, that the country gentlemen, who do not
 “ take upon them to judge, and will trust nobody, fly
 “ back ; and there falls the bill. And so it will ever be
 “ until they trust some persons with the conduct of it,
 “ who are capable and willing to promote it. For, as to
 “ the tremendous frauds, that are so much exaggerated
 “ by some, I must needs alledge that records of every
 “ court of justice are obnoxious to ten times more ; and
 “ if those courts were now to be settled, no man could
 “ agree to such looseness of keeping records, that con-
 “ cern men’s estates, as there is to be observed : And
 “ yet they do the work they were instituted for ; and so
 “ would Registers, if they were once established. As,
 “ for instance, the Register of the Fens hath not had
 “ one fraud exercised upon that office since, by the act
 “ for dividing the great level, it was erected.

“ My Lord Chief Justice Hales had turned that
 “ matter in his thoughts, and composed a Treatise, not
 “ so much against the thing (for he wishes it could be)
 “ as against the manner of establishing of it ; of which he
 “ is not satisfied, but fears more holes may be made than
 “ mended by it. My Lord Chief Justice North, on the
 “ other side, thought that it was not only practicable, but
 “ absolutely necessary, and, if it were not done, that
 “ Forgery would soon be the best trade in England.
 “ That used to be his expression.

“ And because some used to say that Forgeries were
 “ not frequent, or that they were commonly unsucces-
 “ ful, because on careful examination at trials, they
 “ were, for the most part, detected; he bethought him-
 “ self of all the successful Forgeries that came to his
 “ own knowledge, or that he really thought to be so
 “ in the course of his business; and of them he made a
 “ list. The modern way of conveyancing is so private
 “ that no wise man, be he never so careful, can be aware
 “ of it; and his Lordship thought the law ought to be
 “ so settled that a wise and careful man might be sure of
 “ his title, whatever became of the supine and negligent,
 “ and that the old rule is true, viz. *Quod vigilantibus*
 “ *et non dormientibus obveniunt leges*. That is, that
 “ Laws are made for the benefit of those that are watch-
 “ ful and diligent, and not of the careless and negli-
 “ gent.”*

It is time that the artificial system of English law, which has for ages placed reason and justice in opposition, should be abandoned; that the interpretation of legal language should be no longer difficult *propter strepitum verborum*; and that Equity should abandon its disgraceful maxim—*in fictione juris subsistit equitas*. Every man possessing the use and emoluments of property is equally entitled to the character and denomination of legal owner; and however necessary or expedient the fictions and verbiage of conveyancing may have been in antient times, forms are not always essential when the ends for which they were instituted are obtained. The author of the *Wealth of Nations* has shewn the unproductiveness of the labour of legal “word-mongers;” and that “in order to increase their pay, attornies and

* Life of Lord K. Guilford, p. 109.

clerks in every court of justice in Europe have contrived to multiply words beyond all necessity, to the great corruption of law language." A reform of the system of Conveyancing and the laws of real property would ultimately diminish the litigation in the Courts of Equity far beyond the idea of the general reader.* The annual extent of the sales of real property in England and Wales has been calculated from the *ad valorem* duty paid on conveyances. The duty for the year 1825, amounted to about £440,000; which at the average rate of $1\frac{1}{2}$ per cent. would give for the aggregate purchase money upwards of £85,000,000, and for the yearly value (taking the whole at the high rate of 30 years purchase) about £1,200,000!†

* "The actual jurisprudence of the law of England is not entitled to the praise of simplicity: that branch of it, which the Reminiscent has professed during almost half a century, the jurisprudence of its real and personal property—is singularly and surprisingly complicated. * * * It was found necessary to invest the *Court of Chancery* with powers unknown to the laws and constitution of the country. * * * Half the property of the land is vested in nominal owners; and a multitude of very nice cases incessantly occur. * * * The complicated nature of the modification of property in England has given its legal instruments a length unknown on the continent."—*Butler's Reminiscences*, vol. I. *Remarks on the English Law of Real Property*.

† The question of a General Registration of Titles of Land has been the subject of many excellent Law Tracts in which all the advantages and disadvantages have been fully reasoned and compared. See Sir Matthew Hale's *Treatise on the Benefit of Registering Deeds in England*: Fabian Phillips's *Reforming Registry*, 4to. 1691: *Reasons and Proposals for a Registry of all Deeds and Incumbrances of Real Estates*, 4to. 1671: *Reasons against the Bill for Countie Registers*, 4to: *Reasons against a Registry for Deeds, &c.* 4to. 1678: *an Essay on a Registry for Titles of Lands*, by Mr. Asgill, 8vo. 1698: *Reflections on Mr. Asgill's Essay*, 8vo. 1699: *Treatise, shewing how useful, safe, reasonable and beneficial the Inrolling and Registering of all Conveyances of Lands, &c.* 4to. 1695: *Arguments and Materials for a Registry of Estates*, 4to. 1698: Har-

In the United States of North America the modes of conveyancing are greatly improved, and the laws of real property materially changed. Of the ancient feudal system nothing remains but a few harmless names and obsolete forms. All the lands sold by the state of New York, have been granted allodially in name as well as in substance, although from custom and verbiage the words "fee simple" are used in the conveyances. Estates tail are every where (except in one state) either abolished, or a simple form has been provided for converting them into absolute estates.* In four states, viz. Vermont, Illinois, Indiana, and Louisiana, these fetters of property never had existence. In South Carolina, the statute *de donis* was not in force, but fees conditional at common law prevail. In twelve states they have been abolished or converted by statutes into fee simple absolute, viz. New York, Ohio, Virginia, North Carolina, Georgia, Missouri, Tennessee, Kentucky, Connecticut, Alabama, Mississippi, and New Jersey; but in the last *four*, a species of estate tail exists for the life of one donee, or a succession of donees *then living*. In six states they may be barred by deed, acknowledged before a court or some magistrate, viz. in Rhode Island, Maine, Pennsylvania, Massachus-

leian Miscellany, vol. iii. p. 303, ed. 1764: *Impartial Thoughts on the Beneficial Consequences of Inrolling all Deeds, Wills, &c. affecting Lands in England and Wales*, by Francis Plowden, Esq. Conveyancer, 8vo 1799, &c. &c. Two Drafts of Acts may be found in Plowden, and in the Reprint of Hale's Tract, 1756. The latter is verbatim the Draft of the Commonwealth Committee, as prepared by Whitelocke, Lisle, Chief Baron Lane, Prideaux, and Sir Anthony Ashley Cooper. It is also reprinted in the last edition of the Somer's Tracts, vol. vi.

* A Dissertation, &c. on the Jurisdiction of the Courts of the United States, by Peter S. Du Ponceau, L. L. D. Philadelphia, 1824. p. 115.

sets, Maryland and Delaware; but in the last four may also be barred by fine and common recovery. The exception in which they exist as in England, with all their peculiar incidents, is in the state of New Hampshire.* The doctrine of survivorship in joint tenancy is also abolished. The law of primogeniture no longer subsists in any of the States. Manors and Copyholds are unknown. Conveyancing has been reduced to simple forms, and is not now a mystical science. Registries of deeds and mortgages have been established in *every* state.† Doubtless some of these beneficial transatlantic alterations of the law, are only incident to the peculiar circumstances and government of the Union: but surely many practical improvements might be safely adopted in Europe, without any of those fatal or revolutionary consequences resulting, which a desperate fear of republican contagion weakly apprehends.

If the principle and system of *Tithes* and *Modus* were revised and amended by the legislature, another part of the jurisdiction and occupation of the English Courts of Equity would be abridged, without injury, but with great advantage to the permanent *establishment* of the National Church.

Various equity proceedings also, by Bills of Discovery really instituted for the purpose of procuring evidence in Common Law causes, might be removed by giving to the latter jurisdiction a concurrent power of obtaining and applying the equity principles of evidence.

Although the King of England, as *Pater Patriæ*, is entitled to the care of *Infants*, there can be no reason

* See the Annual Law Register of the United States, edited by the Hon. W. Griffith, published at Burlington, New Jersey.

† Du Ponceau, p. 115.

why a jurisdiction delegated to the Court of Chancery, should not be more specifically placed under a separate representation, which would relieve the Chancellor and his court from frequent occupation. An officer, in the character of a Master, might by a general superintendence of this branch of the jurisdiction, greatly diminish the pressure of business.

In the Appendix of the Chancery Commission Report, Mr. John Forster, an eminent Solicitor retired from the profession, suggests some valuable propositions for transferring this part of the jurisdiction of the Court of Chancery to a separate tribunal. He admits that "the Court of Chancery is the best of Trustees for Infants," but he asserts that "*the expence of its protection can only be borne by large fortunes.*"

There were in some of the North American colonies before the rebellion, and there are probably at this day, in several of the United States, courts for the protection of the properties of infants, denominated Orphans' courts, in which the guardians and others having the possession or management of such properties were compellable, in a summary way, (by mere summons or order) to account for them, and to pay into court all monies in or from time to time coming to their hands. The accounts were delivered and passed in the common form of receivers accounts, on oath, without delay, and such as were the managers of landed property were held to the regularly passing their accounts, and payment of their balances, at stated periods, and all matters respecting the infants' concerns were regulated and decided.

By this institution the properties of the infants were preserved; each infant's account being regularly kept, and the amount in readiness for payment on the attainment of

the majority of the male, or marriage of the female infant. The expense was so trifling, that it was no burthen on very small properties.

The establishment of such an institution as the American in this country, would be a great blessing.

It would relieve the Court of Chancery of a material portion of its overweight, and be the salvation of many an infant's property from fraud and waste.

It may be objected that the present masters are competent to the discharge of all the proposed duties, except the judicial, respecting infants' properties.

This is not a conclusion to be drawn from past experience of the rate of motion in their offices; and if they are at present overloaded, the multiplication of causes to which the new regulations will (if adopted) give birth, will so increase their burthen as to render it impossible for them to give such an augmented field of business all the attention and dispatch it will require. In fact the multiplied accounts of the infants alone, will form a large branch or department.

Some doubts may be entertained of the propriety or necessity of investing the head of the court with judicial power. This is not an essential part of the plan. Its double utility will be, the relief of the Court of Chancery of a part of its overload of business, and the quick and cheap administration of justice in all infants cases. But all objection may be obviated, if it is left open to the parties interested in any case of litigation, to resort to the Court of Chancery in preference, if they shall so think fit.

If the proposed jurisdiction is given to the head of the court, a discretionary power will of course be given him of sending such cases as he may think fit, to the courts of law in the form of issues for trial.*

* Chancery Commission, Appendix C. p. 582.

The branch of the Equity jurisdiction denominated *Trusts*, comprises an extent of Equity litigation almost alone sufficient to engross the judicial attention of the Chancellor.

The litigation constantly arising in the Court of Chancery from its equitable jurisdiction over the uses and trusts of the *Public Charities* and *Corporations*, might be nearly suppressed in the legislative prevention of the abuses, the remedy of part of which is now only to be obtained in equity. All our great towns and cities, indeed most parishes, possess numerous foundations for charitable purposes. It is notorious that notwithstanding the Royal and Parliamentary commissions of *inquiry*, and the consequent exposure of malversation, much remains *to be done* to remedy the misapplication, non-application, embezzlement and abuse of eleemosynary funds, and to extend the ends of institutions conformably to the intention of the founders, and the increase of means which time has afforded. This reform might be made and preserved by the establishment of a limited tribunal for the special purpose of insuring and extending the utility of charitable trusts. An article in the Abstract Statement presented by the Commissioners of Charities, entitled "*Proceedings in the Court of Chancery v. Trustees, &c.*" containing the mere titles or names of the causes prosecuted or prosecuting, occupy five folio pages! Public Schools are a prolific source of equity litigation and interference. Surely the period is arrived when the government and legislature of the nation will establish some general system of Public Education throughout the kingdom, and improve the discipline and modes of instruction in the royal foundations and public grammar schools. The grand axiom is now uni-

versally admitted, that education is the best employment of all the means which can be made use of, by man, for rendering the human mind to the greatest possible degree the cause of human happiness—

Can knowledge have no bound, but must advance
So far, to make us wish for ignorance?*

The delays and costs in an information upon a charity in fact render the Court of Chancery no general remedy of charitable abuses: the relator, complaining of those abuses, being subject to all the costs of the suit, naturally secures impunity for the majority of the violators of public trusts. At the instance of Sir Samuel Romilly an act was passed in 1812,† for diminishing the costs on such applications, by enabling any person to present a petition to the Lord Chancellor, the Master of the Rolls, or the Barons of the Exchequer, complaining of any abuse of a charitable trust; and provides that the case may be heard in a summary way upon affidavits without the forms of pleadings in equity. But although that statute has greatly diminished the expence of bringing such complaints before the Court of Chancery, Sir Samuel Romilly, in his evidence before the Education Committee in 1816, deposed as follows:—"The costs of an information are in general extremely high, so high that it must be an act of great imprudence in any person to become relator in such a suit, unless it is quite clear that he shall be able to establish in evidence such a case of abuse of trust as will induce the court to make the defendants pay the costs of it, or at all events to order that the costs be paid out of

* Denham.

† 52 George III. c. 101.

“ the estate itself; and I have known many cases in which the costs, if paid out of the charity estate, would make it impossible that the purposes of the charity could be fulfilled for many years.”

Corporations, are notoriously anomalous in their constitution and corrupt or defective in their administration. However useful or expedient their establishment may have been in former times, it is generally admitted that if they have not survived their utility, great reforms and amendments, particularly the introduction of the popular principle of election, are necessary to adapt them to the interests of the present age. All the evils of self-constituted and irresponsible government are engendered in these stagnant bodies. They are the preserves of bigotry and party feeling—the ready-made instruments of power;—

“ Hence Charter’d Boroughs are such public plagues;
And burghers, men immaculate, perhaps,
In all their private functions, once combin’d,
Become a loathsome body, only fit
For dissolution, hurtful to the main.”

English History proves that from time immemorial they were studiously and systematically used in objects of political craft. In the reign of Charles II. the Corporations and local Magistracy were both the means and co-operators in unconstitutional government.*

* “ The Court not content with all their victories, resolved to free themselves from the fears of troublesome parliaments for the future. The cities and boroughs of England were invited and prevailed upon to demonstrate their loyalty, by surrendering up their charters, and taking new ones modelled as the Court thought fit. There is no sort of theft or perfidy more criminal, than for a body of men, whom their neighbours

Mr. Hume, the partial historian and apologist of arbitrary power, thus records the use made of them: "the recent evils of civil war and usurpation had naturally increased the spirit of submission to the monarch, and had thrown the nation into that dangerous extreme. During the violent and zealous government of the Parliament and Protectors, all magistrates liable to suspicion, had been expelled the Corporations; and none had been admitted who gave not proofs of affection to the ruling powers, or who refused to subscribe the covenant. To leave all authority in such hands seemed dangerous; and *the Parliament, therefore empowered the King to appoint Commissioners for regulating the Corporations*, and expelling such magistrates as either intruded themselves by violence, or professed principles dangerous to the constitution, civil and ecclesiastical."† In the subsequent reign of James II., the same infamous course was continued, with the able assistance of Judge Jeffreys. North writes, "this trade of Charters run to excess, and turned to an avowed practice of garbling CORPORATIONS in order to carry elections to the Parliament; and a Committee of Council was appointed to manage the Regulations, as they were called; and there was an itinerant crew of the worst of men, that wrought in the towns to be regulated, under direction of the Committee. These were termed *Regulators*; and according to their characters and designations, Mayors,

have trusted with their concerns to steal away their charters, and affix their seals to such a deed, betraying in that their trust and their oaths. In former ages, Corporations were jealous of their privileges and customs to excess and superstition." *Burnet, Own Times*, vol. i. p. 527

† Hume's History Charles II.

“ Aldermen, Recorders, Common Councils and Free-men were modified and established. The Lord Chief Justice Jeffreys was capitally concerned in the first of these exorbitances, and pushed matters, through all the degrees, into those excesses I mentioned. At first it was his way of making court, but at last it was his shield and defence.”* In the *Examen*, he confirms the same statement, and says that “ the abuse began to grow” when Jeffreys was made chief justice; and that it originated for the purpose of “ compassing elections,” Jeffreys “ valuing himself to the King for doing great matters towards bringing in of charters, as it was called.”† Evelyn asserts that the members returned from these corporate towns were mean representatives, alike ignorant of the local and national interests “ from the effect of the new charters changing the electors.” “ It was reported that Lord Bath carried down with him into Cornwall no fewer than fifteen charters, so that some called him the *Prince Elector*.”‡ This same nobleman put the names of several officers of the guards into the Charters of Cornwall (“ to secure himself the groom of the stole’s place,”) “ which sending up forty-four members, they were for most part so chosen, that the King was sure of their votes on all occasions.”§ Burnet further notices “ that in the new Charters that had been granted, the election of the members was taken out of the hands of the Inhabitants, and restrained to the corporation men, all those being left out who were

* Life of Lord Guilford, p. 213.

† *Examen*. p. 625.

‡ Evelyn’s *Memoirs*, vol. i. p. 561.

§ Burnet’s *Own Times*, vol. iii. p. 15.

not acceptable at Court.”* North writes that Jeffreys “went down into the country, as from the King, *Legatus a Latere*, esteemed a mighty favourite; which together with his lofty airs, made all the Charters like the walls of *Jericho*, fall down before him; and he returned laden with surrenders, the spoils of Towns; which with certain other performances in that voyage advanced his pretensions to favour at court.”† At the same period the Test and Corporation Acts excluded from Corporations a numerous class of honest, intelligent, and conscientious persons, offering a sort of bounty to hypocrites and apostates to undertake civil offices and trusts!

These observations and historical facts are materially connected with the subject of legal reform, because much litigation may be avoided in the courts of equity and common law, by amending and methodizing the law of corporations and the management of their trusts, and because many abuses which the law cannot now remedy, might and would be then entirely prevented. It may not be judicious in this volume to mix up the history of Parliaments with the history of the Court of Chancery,

* Ibid. See also Sir J. Reresby's Memoirs, p. 269—275, as to the corporation of York.

† Examen. p. 626.—The eminent services of this disgraceful judge, James specially rewarded with a ring. North records that it was publicly taken from his majesty's finger, and the presentation of royal favour gazetted! Burnet says that the nation denominated this ring, *Jeffreys's blood-stone*. Jeffreys is reported to have told Dr. Scott, who attended him on his death bed, that his cruelties in the west “were less than satisfied the hard-hearted James;” which also confirms the anecdote, that this Lord Chancellor, when imprisoned in the tower, assured Tutchin (one of his victims who came to visit and exult over him) that on returning from his bloody circuit, he had been “snubbed at court for being too merciful!”

that may be the future subject of a useful and important work, but it is not impertinent to remark that the foregoing details on Corporations are intimately connected with the first principles of legislation; those municipal bodies mainly influence the return of a great majority of the House of Commons; they are partly the property and *boroughs* of Peers, and their close and corrupt state therefore may poison the very fountains of the law.* The evils and mis-management of municipal corporations have naturally induced a strong and general objection to their institution; but under an improved administration their advantages would be universally acknowledged: they are the last vestiges of the ancient and useful territorial courts, the local jurisdictions of which in small debts and petty offences bring justice home to the poor man's door. If therefore all the Charters in the kingdom were revised and rendered consistent; if the charters themselves were in the vernacular language and *published*; if accounts of the pecuniary receipts and disbursements were annually presented to the burgesses and citizens; and if, as a guarantee and security for such improvements, the officers were periodically changed in the exercise of an extended elective principle; such a reform would be produced as must greatly relieve the courts of law, and widely extend the utility of municipal government. The aversion to these salutary changes originates in sinister and therefore injurious objects,

* "James II. laid the foundation of making a Parliament *folo de se*, by hectoring and making bargains with Corporations to surrender their charters, and taking new ones from him, that if they did not send such members as pleased him, he would resume the charters he gave them: and herein he made a great progress, &c." *Coke's Detection*, vol. ii. p. 352.

publicity never being dreaded but from fear of its disclosures.

The law of *Partnerships* is singularly defective in reference to the great commercial concerns of the nation. A revision of its principles and judicial decisions, and a legislative provision for a cheaper and more expeditious mode of determining this class of litigation, would also materially relieve the courts of equity. The suits and injunction cases in partnerships are numerous; and the cost and delay of the remedy in equity, constantly compel parties, in the choice of evils, to abandon right and to submit to wrong. The law of Arbitrations and Awards might be most beneficially extended and improved, and thus *domestic tribunals* would supersede the necessity of innumerable suits and actions. An agreement for arbitration ought to be (under a statute) imperative: at present there is no certainty that an award will not be litigated, with the aggravated consequences of the intermediate delay and expence.*

A considerable portion of the jurisdiction of the Court of Chancery consists in the enforcement of specific performance of agreements; and although in the opinion of Lord Hardwicke it is "the most useful one,"† yet unquestionably the *Common Law*, on parol evidence, would frequently accomplish the ends of justice with greater expedition and less cost.

Previous to any observations on the Chancery practice or technical procedure of the court, the next sub-division of the jurisdiction presents itself, viz:—

III. *The Statutory Jurisdiction of the Chancellor.* Under this head is classed the jurisdiction originally

* The Statute 9 and 10 William III., c. 15, s. 1. does not, as construed in the cases, by any means attain its object.

† Penn, v Baltimore, 1. Ves. 446.

given to the Chancellor, or the Court of Chancery, by acts of Parliament, as distinguished from those acts which merely regulate or enlarge the Equity jurisdiction.

The *Admiralty Jurisdiction* is too limited to require any notice.

All the Chancellor's jurisdiction in *Bankruptcy* is derived from the legislature. A minute inquiry into the separate origin and progress of this part of his judicial power is unnecessary, the consideration of its *present* state being alone essential to the means of its amendment. This jurisdiction is said to decide more important commercial questions than all the other courts in Westminster Hall taken together. It is *ministerial* and *appellate*, frequently blended in exercise. The issuing of Commissions of Bankruptcy, and all the questions arising upon the issue, are matters of original or ministerial jurisdiction. All the proceedings of the Commissioners are subject to the revision of the Chancellor, hence his *appellate* jurisdiction.

The increase of the Bankruptcy questions engaging the attention of the Chancellor during the last quarter of a century is most remarkable; and the inroad on his time is correspondingly great. If the general litigation in the courts of Equity has been accumulative and injurious to the suitors for two centuries past, it is evident that this new deluge of business, unprovided for by the constitution of the court, must necessarily interfere with the other jurisdictions, and consequently be inadequately "disposed of." The following parliamentary return displays the extraordinary increase of Bankruptcy questions.

Bankruptcy.—A Return to several Orders of the House of Commons, dated the 7th day of December, 1866.
For,—Returns of the Number of Dockets struck in the last ten Years,—the Number of Commissions sealed,—the Number of Commissions opened and gazetted, distinguishing Town and Country,—the Number of Commissions opened,—the Number of Commissions sealed,—the Number of Petitions in each year, from the 1st day of October, 1816, to the 1st day of October, 1866.

YEARS.	Total Number of Dockets struck.	Number of Commissions sealed.	Leaving Dockets not acted upon.	Number of Commissions opened and Gazetted.			Difference between Commissions sealed & Commissions opened.	Number superseded.	Number of Certificates.	Number of Petitions.
				In London.	In the Country.	Total opened and gazetted.				
1st Oct. 1st Oct.										
1816 to 1817	2,480	2,311	160	605	1,184	1,879	438	170	1,442	638
1817 — 1818	1,838	1,248	90	450	600	1,050	100	105	970	555
1818 — 1819	2,054	1,913	141	608	720	1,410	497	140	983	554
1819 — 1820	1,003	1,784	110	505	740	1,335	440	144	1,000	505
1820 — 1821	1,773	1,405	108	557	730	1,287	376	132	1,017	610
1821 — 1822	1,592	1,408	104	407	677	1,104	324	124	1,001	550
1822 — 1823	1,801	1,273	108	400	474	904	309	102	753	400
1823 — 1824	1,340	1,244	90	657	420	977	207	105	740	540
1824 — 1825	1,845	1,926	110	549	207	840	380	91	782	543
1825 — 1826	3,540	3,272	277	1,243	1,240	2,480	708	270	1,201	633
	18,755	17,424	1,331	6,820	7,000	13,416	4,008	1,408	9,915	6,124

* The superseded are, in the greater number, of Commissions having been sealed, but not opened, and generally for the purpose of issuing other Commissions against the same persons. In other cases for superseding separate Commissions on the issuing of one against the firm.—some after litigation,—some by consent of all the creditors having proved,—and in some few by the debt being fully paid.

J. P. HENNESSY, Lord Chancellor's Secretary of Commissions of Bankruptcy.—26th December, 1866.

An extract from the Miscellaneous Papers of the Chancery Reports will prove that the business has doubled within the last 25 years :*

No. 6.

Petitions in Bankruptcy set down for hearing in the following periods :

From January 1st, to December 31st, 1799	....	212
-----	-----	1800
-----	-----	1801
-----	-----	1821
-----	-----	1822
-----	-----	1823
		285
		247
		619
		550
		496

And by the Appendix No. 7, it appears, that exclusive of *ex-parte* petitions with orders of course, 1817 petitions were heard and decided in the four years ending August, 1825.†

The entire ministerial system of Bankruptcy has been long denounced as radically defective, and annual changes of the law have in vain endeavoured to remedy the most palpable evils. The late Chancellor, Lord Eldon, officially commenced in 1801 an unqualified condemnation of the administration of this law ; and from the report his Lordship's ingenuous and strong opinion was expressed :‡—" His Lordship observed with warmth, that " the abuse of the Bankrupt law is a disgrace to the " country, and it would be better at once to repeal all " the statutes than to suffer them to be applied to such " purposes ; there is no mercy to the estate ; nothing is " less thought of than the objects of the commission.

* Chancery Report, Appendix, No. 6, p. 1149. † Ibid. No. 7.

‡ Vesey's Reports, vol. vi. p. 1.

“As they are frequently conducted in the country, they are little more than stock in trade for the commissioners, the assignees and solicitor; instead of the solicitors attending to their duty as ministers of the court, for they are so, commissions of bankruptcy are treated as matter of traffic: *A*, taking up the commission, *B* and *C* act as commissioners. They are considered as stock in trade; and calculations are made how many commissions can be brought into the partnership; and unless the Court holds a strong hand over a bankruptcy, particularly as administered in the country, it is itself accessory to as great a nuisance as any known in the land, and known to pass under the forms of its laws.”

In 1817, upon the motion of Mr. John Smith, a committee was appointed by the House of Commons, “*to consider of the Bankrupt Laws and the operation thereof.*”—From this parliamentary enquiry a report and minutes of evidence emanated, containing much valuable matter.* Many of the most prominent evils pointed out by this committee have been partially removed by subsequent statutes.

Some of the propositions of the recent commission for the amendment of this part of the Chancery jurisdiction have been already inserted (page *ante* 367,) viz. Propositions Nos. 166, 167, 168, 169, 170, 171, 172, 173.—The Report of the Commissioners as far as it

* Report ordered to be printed 8 May, 1818; Minutes of Evidence, 16 March, 1818. The witnesses examined before this Committee, and who have the professional merit of first exposing the abuses of the jurisdiction, were—Basil Montagu, Esq. J. F. Vandercom, Esq. G. Lavie, Esq. Sir Samuel Romilly, Samuel Amory, Esq. James Trebeck, Esq. Robert Waithman, Esq. William Cooke, Esq. Archibald Cullen, Esq. George Grote, Esq. and John Ingram Lockart, Esq.

relates to Bankruptcy, was decidedly against a separation of the jurisdictions: the reasons were not equally decisive; and certainly the propositions would not remedy the defects of this court originating in inability to hear; and difficulty in justly deciding. On the subject of the subdivision of the jurisdictions a preliminary question arises, viz. whether the Chancellor, with his numerous avocations and equity jurisdictions, has time duly to discharge his judicial duty in Bankruptcy in addition to his other labours? Mr. Montagu, whose repeated and disinterested publications on this question entitle him to the gratitude of the country, has proved that the Chancellor has *not* time sufficient for this part of his official business.* From the returns made by the Secretary of Bankrupts, the exact time thus occupied may be ascertained: as it appears, that in the Lord Chancellor's Court, in the year 1823, seventy-two days were more or less occupied in bankruptcy: in 1824, eighty-nine days: and in eight months of 1825, seventy-six days: and that during the same period, seventy-two days were, in the year 1823, so devoted in the Vice Chancellor's Court; and in the year 1824, (when the public were, from illness, deprived of the Vice Chancellor's assistance) forty-nine days; and, for six months in the year 1825, forty-seven days. The time is thus exhibited:

	Days in 1823.	Days in 1824.	Days in 1825.
Lord Chancellor's Court.	72	89	76
Vice Chancellor's Court.	72	49	47

* Letters on the Report of the Chancery Commissions to the Right Honourable Robert Peel. 1826—7.

Upon the supposition therefore that the court sits about two hundred days in each year, questions in Bankruptcy are more or less heard, at least, on one-fourth of the days appropriated to business.*

Mr. Montagu observes that the time of the Chancellor thus occupied is not confined to the period in court; the petitions often requiring deep deliberation in private; the evidence frequently voluminous and perplexed, demanding a minute and laborious investigation; and the application of the law, according to previous decisions, the most anxious consideration.†

Since the creation of the office of Vice Chancellor there have been frequent petitions in the nature of Appeals from that court to the Lord Chancellor. The proposition of the Chancery Commissioners to appoint ten Commissioners of Appeal, to relieve the Court of Chancery by rectifying the errors of the general Commissions, is founded on the erroneous supposition that the Bankrupt petitions chiefly originate in appeals from the decisions of the Commissioners, whereas whatever they may profess to be they are in fact not appeals but original hearings. Indeed, on appeals, parties are not confined to the same evidence which was adduced before the Commissioners. All questions of fact in bankruptcy are brought before the court upon affidavits. The objections to this mode of evidence will be stated hereafter; but the Chancery Commissioners report in the most unqualified terms the unsatisfactory nature of

* The Court does not sit in September or October, and generally rises in the middle of August: and there are vacations at Christmas, Easter, and Whitsuntide. Estimating with the non-judicial days these vacations at two months, and deducting Sundays, it will appear that the court sits about 200 days.

† First Letter, p. 8.

evidence collected from affidavits, in which no party can be compelled to make an affidavit, or to state more of the matter to which he deposes than he thinks fit to disclose; consequently, that the Court of Chancery after great expence to the parties, and a long and laborious occupation of the time of the court in the comparison of affidavits, is seldom able to arrive at a safe conclusion upon the disputed facts, and is often compelled to direct an issue to be tried at Common law by a Jury.*

The printed paper of petitions for the month of July, 1826, shews that in 253 petitions for hearing, 27 were appeals from Commissioners, and 226 unconnected with the Commissioners, as follows:—

Unconnected with Commissioners.	Appeals from Commissioners.	Total.
To stay Certificates 7	To prove Debts 26	
To supersede 27	To expunge 1	
To remove Assignees 9		
Equitable Mortgages 34		
General 149		
226	27	253

If the general contents of this volume have not proved the utter inability of the Lord Chancellor to discharge the various and increasing duties imposed on his political and judicial office, the above *facts* indisputably shew that with the due administration of his equity jurisdictions, he has *not* time for the great and increasing labours of his Bankruptcy business,—*therefore*, that some subdivision of labour has here become absolutely necessary. Although it may be advisable to

* Chancery Report, p. 36.

relieve the Chancellor of the great mass of interlocutory Bankrupt questions which now occupies his time, it may be material that any new tribunal, to whose jurisdiction they may be transferred, shall act under the controul of his supreme legal power, and under some limitations subject to appeal to his ultimate decision or review. It has been the controversial subject of several recent practical and ingenious publications, whether the execution of the Bankrupt Laws shall continue to be confided to occasional Commissioners, or whether a permanent tribunal shall be created for their administration. There are certainly great objections to the principle and practice of London and Country Commissions: the system needs revision, if not partial *abolition*. The *Insolvent Laws* are also notoriously defective in their principle and administration; and it may become a serious consideration with the Legislature, whether the Bankrupt and Insolvent Acts may not be better administered under an entirely new and joint jurisdiction. Temporary expedients have hitherto distinguished our legislation. New Bankrupt Statutes annually alter the law, and new Bills are doubtless still in the consideration of our active legislators. A just observation has been made with reference to the recent consolidation of the Bankrupt Laws, and the periodical additions to them, that "our Legislature has unfortunately fallen into the error of adapting the law to the tribunal which is to execute it, instead of amending the tribunals to meet the improvements of the law."*

An intelligent Committee of the Common Council of the City of London, was lately appointed to enquire into the present state of the Bankrupt Laws, as administered in this country. They procured the evidence

* Jurist, No. I. Art iv.

of several of the most respectable merchants, bankers and traders, and of eminent barristers and solicitors, both in town and country, on the subject. Circular letters also, containing certain questions, were sent to some of the first traders and merchants in the principal manufacturing cities and towns in England, the answers to which and the whole body of information have been printed, and a Report* made, which closes with the following striking representation and remedial proposition—"We further certify, that, after having duly considered the evidence which has been laid before us and annexed to this our Report, and the information we have otherwise received upon this important subject, we are fully of opinion, that the present state of the Bankrupt Laws, as now administered in this country, is totally inconsistent and at variance with the intention and meaning of the original constitution of those laws,—that the present system of the administration of the Bankrupt Laws falls short of the necessities required by the commercial interests of this country; and having witnessed the mode in which the affairs of Bankrupts are conducted at the Court of Commissioners in *Basinghall Street*, we are further of opinion, that the Bankrupt Laws require material and speedy alteration, and that, instead of the mode in which those laws are at present administered by seventy Commissioners in *London*, a regular tribunal should be established for that purpose, having at its head a judge or judges of great experience and sound legal knowledge, and having also proper officers duly qualified, with such jurisdiction as in the wisdom of

* Report to the Common Council from a Special Committee appointed to take into consideration the present state of the Bankrupt Laws. Presented 15th March, 1827.

“Parliament may be deemed necessary and competent, to take cognizance of all matters relating to the Bankrupt Laws. We do therefore recommend to this honourable Court, that petitions should be presented by this Court to both Houses of Parliament, for constituting such a tribunal for the administration of those laws.

Dated the fifteenth day of March, 1827.

J. HARTLEY,	EDWARD TICKNER,
SAMUEL FAVELL,	JAMES HARMER,
RICHARD TAYLOR,	JOHN DRINKALD,
WILLIAM ROW, Jun.	R. SLADE.”

Subsequently to the above Report some Parliamentary returns* have exhibited the remarkable facts, that between the 1st of April, 1824, and 1st of April, 1827, in a period of three years, there have been held in *London* (exclusive of the Country) *Fifteen Thousand* Public Meetings of the Commissioners of Bankrupts, and *Six Thousand One Hundred and Thirty-two* Private Meetings! viz.

	Private Meetings.	Public Meetings.
1824—5	.... 3,137	.... 546
1825—6	.... 4,581	.... 567
1826—7	.... 7,342	.... 696

The number and importance of the public interests subjected to this faulty tribunal is palpably displayed in the above return; and it is equally evident that a large revenue might be thence obtained for the support of a permanent, a cheaper, a more expeditious and eligible Bankrupt Jurisdiction.

But admitting the system of *London* Commissions to be in its principle an unobjectionable jurisdiction for

* Bankrupt Returns, Ordered by the House of Commons to be Printed, June 29th, 1827.

metropolitan Bankruptcy, the principle governing the selection of those Commissioners by the Lord Chancellors, is notoriously bad—in one word **PATRONAGE** has dictated the majority of appointments: aptitude for the office of a Commissioner has been generally the last consideration: **PARLIAMENTARY INFLUENCE**, *i. e.* connection with members of the two houses of Parliament, has commanded Commissionerships. Such is the plain though ungracious **TRUTH**; the *Fourteen Lists* of Commissioners during the last Twenty years collated with the **COURT CALENDAR** will prove this assertion, and it is not surprising therefore that much of the duty of these **SEVENTY pseudo** judicial persons should be inadequately performed.

A more minute animadversion on the practical and technical defects of the London and *Country* Commissions is inconsistent with the limits of this work, and has been ably performed in many recent publications on the evils of the existing system of Bankruptcy. The constitution of the *Country* Commissions is radically defective: the majority of Commissioners are there nominated by the Solicitor to the petitioning Creditor, and are often so appointed, notwithstanding youth and inexperience, from sinister motives of friendship and connexion. The Chancery Commissioners appear to think that an increase of *fees* necessarily begets an increase of *official aptitude*; that the Quorum fee of *three* guineas being raised to *five*, creates immediately a proportionate increase of *qualification* in the acting Commissioner.* If this were the fact, England in the present century,

* "That in order to secure the competent execution of all Commissions in the Country, &c. &c. the remuneration to be paid to the acting Commissioner should be after the rate of five guineas per diem." *Chancery Report*, p. 46, *Proposition* 50.

with the constant increase of judicial fees, would be in the enjoyment of the golden age of Justice.

Whatever may be the fate of the general question of the reform of the Court of Chancery in the ensuing Session of Parliament, *this* branch of the equity jurisdictions must certainly command an early and close attention; and from the conflicting statements and opinions on the subject, it is evident that the ultimate decision and mode of amendment ought to be again committed to the consideration of some competent Commission. It is far better that the contemplated alterations should be postponed twelvemonths for the maturity of some adequate mode of improvement, than that any *half* measures should temporarily remove evils only eventually to aggravate them,—a quackery, which invariably commits the double injury of deadening the spirit of public inquiry, and by procrastinating a real reform of abuses to render them ultimately irremediable.

The remainder of the *Statutory Jurisdiction of the Chancellor*, though various, comprises a very limited occupation of his time;—viz. 1. In the City of London Tythes:* 2. The Habeas Corpus Act:† 3. Arbitration:‡ 4. The Jews:§ 5. Infant Trustees or Mortgagees, enabled to convey under the direction of the Court of Chancery or Exchequer:¶ 6. The Marriage Act, as to Minors: 7. The Friendly Society Act:¶ 8. A Jurisdiction frequently given under Private Acts: 9. The jurisdiction of the Chancellor as to Justices of the Peace, extending only to the putting them in Commission.

* 22 & 23 Charles II., c. 15. s. 12.

† 31 Charles II., c. 2.

‡ 9 & 10 William III., c. 15. s. 1.

§ 1 Anne, c. 30.

¶ 7 Anne, c. 19.

¶ 33 Geo. III. c. 54.

The Report of the Chancery Commission strongly recommends, for the relief of the Court of Chancery, that the new Statutory jurisdiction created by local or private acts of Parliament, be in future transferred to the Court of Exchequer.* In this recommendation the Commissioners echo a former report of the House of Lords, which in many points was a valuable remedial document.† The following extracts from that excellent Report are very pertinent to the above subject of relieving the Court of Chancery from many of these petty jurisdictions :—

“ In England, the increased Business of the Court of Chancery, in which the Property of the Suitors has, within the course of the last reign, risen from £4,700,000 to above 33,000,000 sterling, has not only increased of necessity the number of Appeals, but has also occupied so much larger a portion of the time and labor of the Lord Chancellor in his own Court, as to preclude him from bestowing an adequate degree of attendance for the decision of all the appeals which come from England, Scotland, and Ireland, to the house of Lords.

“ With respect to England the Committee have proceeded to enquire how far the attendance of the Chancellor in the Court of Chancery may be rendered more adequate to the transaction of business in that Court, consistently with his attendance in the house of Lords; and it has been represented to them, that this may be in some degree effected in various ways. It may be done by enabling other Courts to take cognizance of matters at present wholly under the cog-

* Chancery Report, p. 35.

† Report from the Lord's Committees appointed a Select Committee on the Appellate Jurisdiction of the House of Lords. Reprinted by order of the Commons, February 24, 1824.

assistance of that Court: or by occasionally referring to other Courts, or other Judge or Judges, matters which are now subject to the Jurisdiction both of the Court of Chancery and of such other Courts or Judges, but which are generally made the subjects of application to Chancery only; and by not allowing, in certain cases, appeals or rehearings from one branch of the Court of Chancery to another; and by not allowing, in certain cases, appeals from that Court to the house of Lords; and by the Court being enabled (in cases in which, according to Law, it may not now have authority so to do, to alter the rules of practice in the Court: and possibly by other provisions and regulations.

“ It has been further stated, that there are motions of many kinds requiring instant hearing, which, in the present state of the Country, and the business which its concerns produce, require often much of the Chancellor's three days attendance in the Court of Chancery to be devoted to them. Such are motions for *Injunctions* in many Cases; for Writs of *Ne exeat regno*, being in the nature of an equitable holding to bail; and motions against persons charged with *Contempts of the Court*: and such also are the motions for dissolving such injunctions; for discharging such Writs of *Ne exeat*; for discharging parties from Imprisonment for Contempts: and it has been represented, that these motions, too, are of much importance to the property or personal liberty of the subject, and therefore his time is not mis-spent in hearing such motions, and much expence is thereby saved to the suitor.

“ With respect to such motions, and some other parts of the business of the Court, it has been suggested for consideration, that it might be useful to call into operation more frequently the Commissioners of Assistance, consisting of puisne Judges and Masters, who, under the Commission, may hear and determine the business of the Court in the Chancellor's absence; but the Committee are not enabled to

state that so much utility could be derived from this as to express at present a recommendation that this assistance should be frequently called for.

“ Amongst the measures which it may be most expedient to adopt for relieving the Lord Chancellor from some of the business of the Court of Chancery, are the following:—

“ As to matters arising out of the execution of *Local* and *Private* Acts of Parliament. For about thirty Years last past, by virtue partly of standing orders in this house, and partly by the practice and usage of the house, the Court of Chancery has been made an instrument in the execution of Local Acts of Parliament, relating to Canals, Navigations, Aqueducts, Avenues to Bridges, Inclosures, Docks, Railways, Tramroads, opening and paving Streets, supplying Towns with Water and Gas, and various other speculations; by which Acts the Purchase Money of Lands, taken under the authority of Parliament for such purposes (where the titles are doubtful, or cannot be immediately completed,) is directed to be paid into the Court of Chancery; there to remain until, by proceedings in that Court, the titles can be tried, or means found by that Court to clear doubtful titles: and it is obvious that, in every case, in which Parliament has thus burthened the Court of Chancery, this new species of business operates against the despatch of the ordinary business of the Court.

“ This practice of Parliament seems to have originated when the Court of Chancery alone had an Accountant General, who could act with the Bank of England in the care of the purchase money. But it has been suggested that the Court of Exchequer, having now an Accountant General and Masters, the Court of Chancery might be relieved as to this business, or part of it, by introducing into the standing orders of the house, and future Acts of Parliament passed conformably to them, the Court of Exchequer, instead of the Court of Chancery. And it has also been suggested that the

Court of Chancery might be further relieved by giving to the Court of Exchequer the execution of Private Acts of Parliament of different descriptions.

“In the several Local Acts of Parliament above mentioned, the persons entrusted to carry such acts into execution are not allowed to enter upon Lands wanted for the purposes of such acts, unless they observe the regulations respecting things to be done for the benefit of the persons whose Land is to be taken for those purposes. These regulations are, it is represented, often not attended to, and the non-observance of them occasions applications to the Court of Chancery for injunctions to prevent parties from entering until such regulations have been observed. The discussions which take place in the Court upon applications to dissolve these injunctions are represented as employing the Court for a considerable time, in some instances not less than, or during a very large proportion of, the three days per week, in which the Lord Chancellor now attends the Court. The fact that all the monies which are to be disposed of in executing these Acts of Parliament were to be paid into Chancery, has naturally led the parties concerned in the matter of these injunctions into the same Court; and the great number of acts passed in the last twenty years, in the execution of which the Court of Chancery has been made an instrument, cannot but have occasioned a very considerable addition to the business of that Court. These matters it has been suggested might be transacted in the Court of Exchequer, by applications to be there made for injunctions, or orders in the nature of injunctions; and it may deserve consideration, whether provision might not be made also for enabling the Court of Common Pleas to administer Justice in such matters, upon applications to be made to that Court for orders or rules in the nature of prohibitions, to be discharged by that Court, or some of the Judges thereof, upon just cause shewn.

“ It deserves also consideration, whether in like manner relief might not be given to the Court of Chancery, with respect to Acts of Parliament which create Benefit Societies, Friendly Societies, and other Societies of a like nature, the disputes among the members of which, as to their property, the Court of Chancery has been by many acts required to hear and determine; and which Societies, either not understanding the effect of the Parliamentary Regulations which they are required to attend to, or omitting to observe them, or forming their existence upon principles upon which they cannot continue to exist, furnish calls upon the time of the Court of Chancery, to the obstruction of the ordinary business within its jurisdiction.”

These judicious remedial observations contain far more effective suggestions than many of the verbose and timid propositions of the recent Chancery Report; and form a singular exception to the general inferiority of the Parliamentary Reports of the Lords as compared with those of the Commons.

From this representation of the *Statutory Jurisdiction of the Court of Chancery*, and its entire distinctness from the general jurisdictions of Equity, it is clear that the whole (excepting a limited province of appeal) might be advisedly dislocated and transferred to another tribunal: at all events, if no alteration be made in the principle of its administration, the Lord Chancellor might be relieved of his labour as *Administrator*, by the subdivision of labour in the transfer of that portion of his duties to another judge.

IV. *The Specially Delegated Jurisdiction of the Chancellor.*—The foundation of this jurisdiction is the authority of the Crown over Idiots and Lunatics. The origin of this prerogative of the King is involved in

considerable obscurity, and is more a matter of curious than useful enquiry. Before the Court of *Wards* was established, the jurisdiction was vested in the Lord Chancellor, and after the abolition of the Court of Wards,* it reverted back to its former possessor.† The administration of the estates of idiots and lunatics, is not necessarily but only customarily committed by the Crown as a personal authority to the Lord Chancellor. It appears to have been generally delegated to that officer as a judicial person, who having the custody of the great seal could both act in these matters and also attest the delegation of the power. The appeal, in case of error or maladministration in the Chancellor, is immediately to the King in Council.

As the authority of the Chancellor in Lunacy is *personal*; the Master of the Rolls cannot sit for him; and thus the whole administration of this jurisdiction is heaped upon the former.

Avarice, pecuniary speculation, luxury, and the long continued intermarriages of the aristocracy, independently of the increasing population of the empire, have naturally increased the judicial business of this department of the Court of Chancery during the last half century. In what proportion it is here unnecessary to discuss: the total increase however appears mournfully displayed, in the Chancery Report and Appendices.

In 1790, Lord Thurlow made 138 Lunacy orders; in 1791, 91 orders; and 1792, 94 orders. In 1821, Lord Eldon made 245 orders; in 1822, 320; and in 1823, 364.‡

* By Stat. 12, Charles II. c. 24.

† Maddock, vol. ii. p. 366.

‡ Chancery Report. Minutes of Evidence. Thomas Carr, Esq. Secretary of Lunatics. p. 563

The following return to the Chancery Commissioners by Mr. Carr, Secretary of Lunatics, shows the same increase of lunacy business.*

“ An Account of Lunacy Petitions set down for hearing during the years 1799, 1800 and 1801, and during the years 1821, 1822 and 1823.”

1799	-	-	-	-	-	-	119
1800	-	-	-	-	-	-	124
1801	-	-	-	-	-	-	147
Total							390
1821	-	-	-	-	-	-	245
1822	-	-	-	-	-	-	320
1823	-	-	-	-	-	-	364
Total							929

An account has been rendered by Mr. Carr of the number of days in which Lord Eldon was occupied, exclusively, or more or less, in Lunacy business. The statement is as follows:—†

“ Since Mr. Carr was appointed secretary of Lunatics, viz. in April 1797, the business of the court of chancery has very considerably increased, and become materially altered. It has been already stated that the lunacy business, according to the ordinary practice, is appointed to be heard on particular days, viz. on a certain day before and after every term, thus making eight days in the year. Formerly the lunacy business, rarely extended beyond those days, except in special cases, which were distinctly heard on days appointed for the occasion: since the general business of the

* Appendix D. No. 8. p. 1150.

† Chancery Report. Appendix C. p. 1144.

“ court however has increased, the motions which were
 “ formerly exclusively appointed for and heard on the
 “ seal days, have in a great measure occupied the time of
 “ the Lord Chancellor from seal to seal ; and the last seal
 “ after Hilary, Trinity and Michaelmas terms, has often
 “ taken up from a week to ten days, in consequence of
 “ which the lunatic and other petitions are seldom or
 “ never heard on the days appointed ; and upon an
 “ average of the last three years it appears that the
 “ Lord Chancellor was occupied with lunacy business,
 “ sometimes exclusively, and at others with the general
 “ business of the court

In 1822	-	-	-	-	97 days
1823	-	-	-	-	94
1824	-	-	-	-	104

“ During the present year (1825) his lordship's gene-
 “ ral business has been so considerable as to prevent the
 “ lunacy business appointed for December, being heard,
 “ and it cannot be disposed of till January, when there
 “ will be a considerable accumulation. This interrup-
 “ tion has been occasioned by the business of the seals
 “ and a special argument, which was exclusively heard
 “ for many days, on an application for a commission to
 “ review a decision of delegates : many special motions
 “ also have arisen out of the late speculations ; and the
 “ ordinary occupation of the court has been often broken
 “ in upon and interrupted by business of this nature ;
 “ and when it is found that a very considerable portion
 “ of all such occurrences arise on days, for which a
 “ separate and distinct list of business is entered for
 “ hearing, the reason why the paper of the last men-
 “ tioned business is repeated, is at once explained and
 “ accounted for.”

The Lunatic case of Lord Portsmouth alone occupied Lord Eldon *nineteen days*, sometimes the whole day, sometimes various business of a pressing nature breaking in on his Lordship's attention, and also other lunacy business employing a considerable time. The painful and pressing nature of these questions necessarily and frequently occasions the interruption of the regular paper and business of the court by the preference which the Lord Chancellor is obliged to give to it.

Many recent cases of Lunacy Petitions have displayed the oppressive burthen of this part of the judicial business of the Chancellor; and especially the voluminousness and unsatisfactory nature of written evidence. In the subjoined cases, besides the petitions, the *Affidavits* comprised the following extraordinary mass of writing:—

	Folios.			Folios.
Lord Portsmouth	2300	Wykeham	- -	184
Sir G. O. P. Turner	400	Wood	- -	250
Barlee - - -	500	Millson	- -	220
Barlow - - -	200	Wooler	- -	160
Penton - - -	100	Lucas	- -	200
Middleton - -	280	Frank	- -	940
Stripp - - -	150	Woolfryers	- -	130
Saumarez - -	180			

In the whole 6,194 folios, which, independent of hearing the recitals and comment of Counsel, the Lord Chancellor is obliged to read before he comes to a decision! In his private room also the Chancellor frequently confers with the Medical men, and occasionally with the Lunatics.

It is not a little singular that the Chancery Commissioners in the last part of their report on the subdivision of the jurisdiction, should not even allude to the possibility or frequent recommendation of removing the Lunacy jurisdiction from the Chancellor to some other tribunal. And this omission is the more singular because they appear fully aware of the excess of judicial labour pressing on his lordship, at the same time that they have arrived at the strange "conclusion that the jurisdiction in Bankruptcy should not be withdrawn from the Lord Chancellor, unless it should eventually appear that it cannot be retained, consistently with the due dispatch of the other business of the Court."^{*} As though their *Propositions* could *possibly* enable the head of the Court of Chancery to administrate his multifarious jurisdictions!

In regard to any subdivision of labour or jurisdiction, the Chancery Commissioners appear to have echoed the report of the Lords' Committee on the Appellate Jurisdiction above quoted, and to have been sensitively alive to any decrease of the *dignity* of the Lord Chancellor—presuming of course that the *dignity* of that great national law officer was promoted by overwhelming duties necessarily ill performed. The Peers in their report entertain a curious *antiquarian* objection to transfer the Lunacy matters from the Chancellor: they admit that "these employ, occasionally, very considerable portions of the Chancellor's time of attendance in his court;" but they argue that the duty should not be withdrawn from the Chancellors, because "the Lord Chancellors have been entrusted *for a very long series of years* with the care of idiots, lunatics, and persons of

* Chancery Report, p 35.

unsound mind :” and, because “the Chancellors have *long* administered the affairs and property of such persons according to settled rules and doctrines, and with establishments of officers necessary for the dispatch of business, and the security and improvement of the property of such persons.”* Surely the same principles, machinery and judicial establishment, could be administered by an officer of competent qualification without the name and appellation of “Lord Chancellor.” It may be a strong expression, but it is justly applied, that he who knows the excessive occupation of the time and mind of the Chancellor, and considers it possible for that law officer advantageously to retain the Bankruptcy and Lunacy, must be *non compos mentis* as defined by Coke, and the fit subject for a Commission *De Lunatico Inquirendo*.

Many practical and technical evils in the procedure and administration of Lunacy are not noticed here from the length of detail, and indeed their importance merges in the superior necessity of first transferring a jurisdiction which is in the main simple, and within the intellectual capacity of judges of strong and discriminating minds.

Such is the nature and quantity of the business in the English Court of Chancery, engrossing and perplexing the time and mind of the Lord Chancellor. But however multifarious and inconsistent his avocations as the head of that Court, his other *extraordinary* judicial and civil duties (which occupy him usually at a period of the year when his *ordinary* duties press most heavily upon him,) are such that it is scarcely credible any *human* being should undertake, much less pretend to accomplish.

* Appellate Report. p. 8.

A singular summary of the functions of an English Lord Chancellor was written half a century ago by Mr. Bentham, with his usual original sense and forcible application of language. The quotation will impress the reader far more than any circumlocution of paraphrase.*

“ Custom, which sanctifies all absurdities, custom alone could reconcile men to the sight of a man holding at the same time a place in the court appealed from, and another in the court appealed to, judging under one name what he has been doing under another. The plea is, that he may be there to defend his decrees; as if a man could not be heard as a defendant, without voting as a Judge. Who is there that does not remember when the nation was kept for years in a ferment, justice become odious, good judicature traduced, and bad judicature painted worse, because a great man, who had one foot on the bench, had another in the house, and was delivering, sometimes in one place, sometimes in another, doctrines supposed to have been learnt in the King’s bedchamber? By degrees it is settled into a rule, that not only the Chancellor shall have a Peerage, but that the same feather shall be stuck into the caps of the two chiefs in the courts of King’s Bench and Common Pleas. Ere long it will get down to the Exchequer, that Westminster-hall may not contain a single bench undefiled by politics. When you have put your Judge into the house, the greatest eulogium you can bestow upon him is, that he might as well be any where else for any thing that he does there. You plunge him head over ears into temptation, and your hope is, that he will not be soiled by it. If this be wisdom, put your daughter to board in Drury-lane, to teach her chastity.

* Draft of Plan for Judicial Establishment in France. 1789. Privately Printed. p. 58—59.

"The Hales, the Holts, and the Raymonds, received no such extraordinary rewards beforehand for ordinary service that was to follow. But is not possible service as good a title to the first honours, as actual wealth without pretence of service? Is partial abuse worth mentioning, in a distinction which has abuse for its sole substance and primeval essence?

"But it is to the Chancery-bench you must look, if you would behold a monster, in comparison of which the chimera of the poets was an ordinary beast, their triple-bodied Geryon an ordinary man.

"1. A single Judge, controlling in civil matters the several jurisdictions of the twelve great Judges.

"2. A necessary member of the cabinet, the chief and most constant adviser of the King in all matters of law.

"3. The perpetual president of the highest of the two houses of Legislature.

"4. The absolute proprietor of a prodigious mass of ecclesiastical patronage.

"5. The competitor of the Minister for almost the whole patronage of the law.

"6. The Keeper of the Great Seal; a transcendant, multifarious, and indefinable office.

"7. The possessor of a multitude of heterogeneous scraps of power, too various to be enumerated.

"All these discordant bodies you see inclosed in one robe, that every one may corrupt another, if it be possible, and that the due discharge of the functions of any one of them may be impossible. Such is the care and providence of Chaos."

The miscellaneous duties of the Lord Chancellor and his "heterogeneous scraps of power" are fast increasing. The *political* taint of his integrity has been sufficiently exposed in every page of this history. The *ecclesiastical*-

tical power and patronage involve more sacred considerations, and a connexion between "Church and State" which it is here inexpedient to discuss: but it may be affirmed, without fear of contradiction, that few Chancellors have acted on Chancellor Wrottesley's resolution—"two things my servants shall not gain by, my livings and my decrees: the one are God's; the other the King's." The *suitors* for *livings* must be a serious inconvenience to this great law officer: he cannot have integrity, leisure or means to determine honestly the merits of respective claimants: the Church of *England* cannot gain by his ecclesiastical patronage, the Church of *Christ* assuredly loses by it.

Two extraordinary and recent stretches of the prerogative of a Lord Chancellor cannot pass unnoticed, viz: the assumption of the offices of *Licensor of the Press*; and of *Censor*, an office of the Roman Emperors who in the height of their power styled themselves *morum præfecti*.

In the former jurisdiction nothing can be more anomalous than the effect of Lord Eldon's interference under the powers given him as the arbiter of copyright. His Lordship would not *protect* a bad book, but assisted to bring (what he deemed) licentiousness and irreligion into notice by cheap pirated publications, thus stimulating and disseminating that which otherwise would be smothered in its own obscurity and insignificance! The liability to error in the selection of the judge, and the possibility of error in his judgment, unite to make this a dangerous power in the hands of any individual. Milton, two centuries since aptly observed that the State might be mistaken in the choice of a Licensor as easily as a Licensor may be

mistaken in an author.* A greater Chancellor than Lord Eldon, namely Lord Bacon, published a judgment which will last for ages—"the punishing of wits enhances their authority, and a forbidden writing is thought to be a certain spark of truth that flies up in the faces of them who seek to tread it out." In the instance of Mr. Lawrence's work nothing could be more palpably absurd than the effect of the literary usurpation of the Equity Court. In this case the Chancellor entered the great desert of polemical and metaphysical controversy. The speculative opinions on *materialism*, cursorily introduced into a physiological work of acknowledged and preeminent merit, (and opinions by the bye, firmly held by many distinguished believers in Revelation and a Future State,) were brought under the cognizance and solemn firman of the Lord Chancellor; a controversy in which some persons would fain persuade us to disbelieve the existence of the *soul*, and others the reality of the *body*, and some would leave us neither soul nor body!

* "I am not able to unfold how this cautious enterprise of licensing can be exempted from the number of vain and impossible attempts. And he who were pleasantly disposed, could not well avoid to liken it to the exploit of that gallant man, who thought to pound up the crows by shutting his Park gate. I cannot set so light by all the inventions, the art, the wit, the grave and solid judgment which is in England, as that it can be comprehended in any twenty capacities how good soever, much less that it should not pass except their superintendence be over it, except it be sifted and strained with their strainer, that it should be uncurrent without their manual stamp. Truth and understanding are not such wares as to be monopolized and traded in by tickets and statutes, and standards. We must not think to make a staple commodity of all the knowledge in the land, to mark and licence it like our broad cloth, and our wool packs. What is it but a servitude like that imposed by the Philistines, not to be allowed the sharpening of our own axes and coulters, but we must repair from all quarters to twenty licensing forgers"—*Areopagitica; a Speech of Mr. John Milton, for the liberty of Unlicensed Printing.* 1644.

To decide between these speculative litigants was the grave occupation of the Lord Chancellor of England, the whole judicial business of whose court was to stand still while he heard counsel and decided this *tripartite* question!* As the Chancellor, with his increasing cares and the spread of speculative inquiry, cannot possibly attend to *this* new branch of his jurisdiction, the *bulk* of a book must necessarily soon become the criterion of his judgment: that is to say, he must either judge by the rule of the grammarian Callimachus, that every great book is of course a bad one, *μεγα Βιβλιον, μεγα παρον*; or according to Pliny, that a good book is valuable in proportion to its size.† The English Chancellors might again be admonished in the words of Milton—“what should ye do then, should ye suppress all this flowery crop of knowledge and new light sprung up and yet springing up daily in this city, should ye set an

* Jacob's Reports, part iii. *Lawrence v. Smith* (1822, March 21, 25, 26.) This case occupied nearly *three* days of Lord Eldon's judicial attention, not to compute the many midnight hours of consideration which ended in a *doubt*. The marginal note of the Reporter on the subject matter of the case in the above report is most instructive: “Injunction to restrain the “infringement of copy-right in a work as to which it appeared doubtful “whether it did not tend to impugn the doctrines of the Scriptures re- “fused.” The conclusion of Lord Eldon's judgment is a palpable exposure of the fallibility of the judge and jurisdiction, replete with what logicians term “begging of the question:”—“Looking at the general “tenour of the work, and at many particular parts of it, recollecting “that the immortality of the soul is one of the doctrines of the Scriptures, “considering that the law does not give protection to those who contra- “dict the Scriptures, and *entertaining a doubt, I think a rational doubt,* “whether this book does not violate that law, I cannot continue the in- “junction! The Plaintiff may bring an action, and when that is decided, “he may apply again!” A great consolation, no doubt! There is a place in England called *Cold Comfort*.

† Pliny. Epist. 20. lib. i.

Oligarchy of twenty ingrossers over it, to bring a famine on our minds again, when we shall know nothing but what is measured to us by their bushel? Believe it (*Lord Chancellors*) they who counsel ye to such a suppression do as good as bid ye suppress your selves.”*

The dangerous and undefined jurisdiction of the Lord Chancellor as a *Censor*, was recently displayed in the case of *Mr. Wellesley*, who from his moral character was pronounced by Lord Eldon unfit to retain the powers of a parent over his children. This case eminently displayed the defects of *affidavit* evidence; and it exhibited this terrific judicial interference of the Lord Chancellor, not in right of any defined or vested power, but solely in consequence of the children of *Mr. Wellesley* being entitled to reversionary property, in respect of which they were made wards of the Court of Chancery! Such, again, is the antique nature of English law—an imitation of the Roman Censorship, which Plutarch denominates the summit of all preferments,—“*omnium honorum apex, vel fastigium*”—and Cicero styles, “*magistra pudoris et modestiæ*.” An excellent writer has justly summed up the evils of this dreadful jurisdiction:—“It is uncertain and capricious in its application; is unaccompanied with the powers necessary to make it harmless to the objects of it; must be frequently injurious to the property of those whom it endeavours to protect, and is of very doubtful benefit to their morals; it is extremely liable to be abused for the

* There was a clause in Stat. 8, Anne, c. 19, empowering the Chancellor and some other great officers of state, to set the price of books, repealed by Stat. 12, Geo. II. c. 36, s. 2.

“ purposes of vexation in family quarrels (and, we may add, however much needed, it will never be resorted to; unless some such quarrels exist) ; it is liable to be abused for the purposes of religious intolerance ; it is entrusted to a Court, the forms of proceeding in which are peculiarly ill-suited to get at the truth in such cases ; and, to crown the whole, it is necessarily attended with enormous expences, which a father cannot be called upon to defray without great injustice, and sometimes ruin.”*

The *appeal* from the Court of Chancery to the House of Lords, and the constitution of that appellate jurisdiction, form another strange and indefensible anomaly in English law procedure. An improved division of labour has certainly been introduced into the latter tribunal ; the inconsistency however of the Lord Chancellor being a paramount judge in appeals from himself still remains ; and in Lord Lyndhurst’s pledge to accomplish some remedy for the delays and evils of this jurisdiction it is especially advisable that his plan whenever brought forward, should include the transfer of this part of his appellate labour to some other judicial persons. The Lords’ Committee reported that “ their object had been to provide some means of hearing appeals, by which the constant and regular attendance of the Lord Chancellor may be dispensed with.”†

* London Magazine, 1827, art. *The Wellesley Case*. Mr. Wellesley in his pamphlet says, that towards his law expences he has already paid £5,500. The fortunes of his two younger children being only £6,000 !

† Appellate Report. p. 14.—It is curious to trace the aggravation of evils by the application of ill contrived remedies. The antient abuses in Chancery appear to have early originated an appeal to Parliament. The

To this history of the Court of Chancery has now been subjoined a brief but complete analysis of the Equity Jurisdiction. It has been shewn, that *Equity* is peculiar to English Jurisprudence; that its distinctions are not founded on principles, but on the contrary, are at variance with reason and precedent. "The people, in proportion as they were oppressed by law, were fond of equity: in proportion as they were oppressed by judges, that is by lawyers, they were fond of juries. Equity according to the shortest and most comprehensive conception that could be given of it, was a sort of law in which every thing was done without

appellate jurisdiction of Parliament is the subject of the pedantic but learned commentary on Hale by Mr. Hargrave. In a scarce and clever treatise, Williams's *Jus Appellandi ad Regem Ipsum a Cancellario*, (London, 18mo. 1693.) the origin and reason of this check is traced; and in section 4. p. 47. "of the modern and present power and jurisdiction of the Court of Equity in Chancery" the author incidentally notices the unsatisfactoriness of the equity tribunals.—"The King's laws, the laws of the twelve tables, the civil law, laws made by the consent of the people, or decrees of the senate, and therein he was not absolute as in the other; but our Chancellor or Keeper and their *Prætor* do differ very much, for the *Prætor* would at his entry into that office propound and publish certain edicts, which were principles and fountains out of which he would derive his decrees; but what rules or general notions the Lord Chancellor or Lord Keeper in *England* doth assign unto himself for limitation of Equity, and direction of his conscience, those lie hid and concealed in his own breast, so that neither the man of law nor equity is able to inform his client what is like to become of the cause, and consequently no man is able to know what is his own, so that it may be said of this great officer arm'd with this great power, as was said of Jeremiah's figs; (Jer. xxiv. 3.) *Those that were good, were very good; but those that were evil were exceeding evil: for that power if it be used according to the true intent and design of it, is of excellent use, but if abus'd it is the greatest oppression imaginable; and that that power hath been abused, will appear by the next section.*" *Optima corrupta sunt pessima.*

juries."^{*} It chiefly therefore originated in schemes to remedy the abuses of common-law procedure: the cure, however, has proved worse than the disease, and for centuries equity has been described, the reader will judge how justly, as "elaborated confusion and licensed pilage."

If the Commissioners, under the Royal Commission of 1925, had cast aside their professional prejudices and boldly traced the origin and cause of the abuses of the Court of Chancery, *politically* as well as technically, they would have discovered and reported the *real* evils existent and the practicable means of remedy.

1. That, with a view to an immediate alleviation of the present burden of suits in the several Courts of Equity, the causes of litigation should be reduced to a minimum, by improvements and reforms in the general system of English law, especially in that portion of it which involves the tenure of Real Property, the required amendments of which the Commissioners ought to have considered and suggested.

2. That the *places* of judicature should be increased and more conveniently located. The *Metropolitan* tribunals are now in *Equity* the only geographical fields of jurisdiction, and have swallowed up the local judicatures: hence the majority of suitors are subjected to the inconvenience of extreme distance, with the consequent proportionate loss of *time* and extra *cost*. If the increased and extraordinary facilities of transit did not exist, the nuisance of an indispensable resort to the metropolis would be intolerable. Surely innumerable questions now litigated in the Courts of Equity, many of whose

^{*} Constan: *Rationale of Judicial Evidence*, vol. iv. p. 344.

important points are referred, on *issues*, to the common law courts, might be tried in the local circuits whence they arise. And would it not be possible to confer, as in America, a concurrent equitable jurisdiction? Wales has its separate Equity Tribunals, which, though inefficient, might still be rendered efficient.* The counties Palatine claim their Court of Chancery, and other parts of the kingdom have enjoyed independent Courts of equity.† The proposition therefore includes no *innovation*, but even though it did, and innovation were needed, why should it not be introduced?

3. That the labour of the Judges should be equalised by a better division of the various jurisdictions, with a restriction of the option now enabling solicitors to try their causes before either of the three Chancery Judges, whence proceeds a continually fluctuating tide of business. As aptitude for office should form *some* consideration

* Appendix, No 9, Courts of Equity in Wales. Evidence of Mr. Serjeant Heywood, before the Committee on the Administration of Justice in Wales, 20 June, 1820. Not that the Welch Equity can be conscientiously lauded as superior to the English. In the Chester Court it is said (*Jurisdiction, &c. of the Great Sessions*, 1795. p. 124) that the "course of equity proceedings is even more dilatory and prolix than in the high Court of Chancery," and as Mr. Bentham comments in his *Rationale of evidence*, "the little Welch equity court being a sort of dormouse, that must generally sleep ten or eleven months of the year; the great high court a sort of sloth, which though at its own pace, keeps on crawling almost the whole year round. Five or six times as much delay as in the grand warehouse of delay; and yet not enough for the appetite of learned travellers, without the extra portion of it attached to sham warrants."

† Dodderidge, p. 35—Rushworth, vol. iv. p. 82.—Dr. Harris in his history of Kent mentions an antient court of equity to mitigate the law, immemorially held in Dover.

in promotions; it is also time that the **POLITICAL** opinions and actions of a barrister should cease to be his chief title to judicial office. This position requires no fact or reasoning after the history of the Court of Chancery as detailed in these pages. Either the Lord Chancellor should be abstracted wholly from his political or his judicial duties; if from the latter, constitute him the chief judge of the appeals from the courts of Equity and the Colonial jurisdictions, and he may then occupy his seat in the Cabinet: but if he is to retain his present pre-eminent judicial station, abstract him from the Cabinet and the Prolocutorship of the House of Lords; * If there be any virtue in the independence and permanency of judicial office, allow the highest judge of the realm to sit so long as he is efficient: this principle surely applies not more forcibly to the lowest judicial officers than to the highest, who are indeed generally most exposed to the temptation of power and sinister influence. It cannot be questioned that innumerable evils in the Equity jurisdictions, as at present administered, subsist in the incompetency of officers of the court. Law was not made for lawyers, but for clients. It cannot perhaps be affirmed, that justice is sold retail, as these are times in which uncloaked venality is not tolerated, but the gift of offices on the least worthy is a judicial corruption of the highest turpitude. *Patronage*, as now exercised in the judicial establishments of this nation, must be limited; and the jobbers of *Boroughs* ("bringing

* " My Lo Keeper tells me that there are many precedents, that ye Peers in P'tian't have chosen thei'r oune Speaker, and that vntil ye Lo. Barleighe's later tyme, there is scarce any Record, that ye King hath by l'v's patents appointed a Speaker for that House." *Evelyn's Memoirs. Correspondence*. 1641. vol. v. p. 92.

parliamentary influence to bear for the acquisition of patronage, and patronage to re-act for the extension of Parliamentary influence") must cease to nominate the judges and other officers of the law. It is notorious that barristers of inferior intellectual character and fortune seek places in the legislature, in order that they may obtain places on the bench, bankrupt commissionerships, Welch judgeships, and other rewards of political servility; thus the great evil arises, that legal appointments are not conferred on those best qualified for them, and that official duties are inadequately discharged without *responsibility*—the only natural security against malversation and abuse. A bounty has been established for political apostacy, and the annals of the last and the present reigns have disclosed scenes of humiliating tergiversation and corruption. The Bar has been proportionably degraded, and *office*, which should be the proud reward of honesty and superior intellectual powers, has been seized by servile legal politicians. The abolition of this infamous system would be no *innovation*: by an antient statute 12 Richard II. it is ordained, that "none shall obtain office by suit, or for reward, but upon desert;" and that the Chancellor and other officers of justice and government shall not bestow patronage appertaining to their respective offices, "for any gift or brocage, favour or affection." The honest and conscientious bestowal of legal patronage was the bright and redeeming character of Coke: he almost invariably promoted men of merit and official fitness, declaring in his quaint law-language that he would have patronage "pass by livery and seizen, and not by bargain and sale." His contemporary, Lord Brooke, poetically laments the want of a salutary law—

Prohibiting those lawless Marts of place,
Which by permission of a careless Crown,
Corrupt and give the Magistrate disgrace
With servile purchase of a selling gown ;
And so rate justice at as vile a price,
As if her state were people's prejudice.

The consequences of *political* influence in the frequent change of the head of the Court of Chancery, entailing innumerable evils on the suitors, are remarkably apparent in a comparison of the numbers of Lord Chancellors and Masters of the Rolls for a period of the last three centuries : it displays a variation of change in the former when compared with that of the latter of two to one ! It might be supposed, that the mastership of the Rolls was the general step to the Seals, and that an aptitude for the duties of the Chancellorship would be most frequently discovered in the incumbent of the subordinate office : but, as before observed, such is not the case, when we compare lists of the two judgements ! The Attorney and Solicitor General, be they equity or common-law practitioners, according to their family or political influence, command succession to this important judicial station ; and all the great officers are generally displaced when their party is overthrown, unless they can trim the judicial sails evenly amidst the dangers of political storms ! * If the duties of an equity judge can be so promptly and efficiently performed by a common-law barrister, as some of the legal translations of

* In the late perplexed state of parties and the rapidly succeeding changes of administration, the Lawyers must have been somewhat subtle to see their way ; like the great aristocrats described in Fuller's *Holy State*, *temp. Hen. VI*, "they live in a troublesome world, wherein the cards were so shuffled, that two kings turned up trumps at once, which amazed men how to play their games."

latter times would suggest, then the *nisi prius* Judges might surely be entrusted with a concurrent equity jurisdiction. If however equity law is so occult and difficult of acquirement, then the promotions in question are most reprehensible. And is it not well known that many late Chancery and Exchequer judges have been confessedly deficient in the necessary qualifications of judges? Are they not known to have resorted to barristers of their new Courts on all important points of decision? It would be far better when a common-law judge is next appointed to Equity office, that a bill should be introduced into Parliament, as in 1620,* nominating two judges of the coif as assessors to the Lord Chancellor: since a counsel advising an Equity judge on a case in which he might chance to have been engaged is not likely to be impartial, but would more probably be really as well as technically, "a Chancellor's *devil*."

The general mode of *remuneration* to the officers of the courts of justice by a mixed system of salary, *fee* and *gratuity* is fraught with evils. It is somewhat curious that all the commissioners of inquiry have hitherto merely inquired into the nature and origin of the fees of court. The total, the relation of the amount to the work, and how far the service keeps pace with the

* Debates of House of Commons. 2 vols. 1770.—In a highly interesting and important debate in the periodical convention held at New York in 1821, (for the revision of the constitution and civil establishments of the State,) MR. KENT, the late eminent Chancellor of New York, and author of the recent admirable Commentaries on American law, declared that the systems of equity and common law were essentially different in their character, relations and objects, and each of them required a distinct preparation, study and qualifications; and that a life devoted to either study will not more than suffice to make an eminent judge.

reward, form no part of their investigations or reports. The general arguments against this defective principle of payment are now too well known and recognised to require any special citation. The system of *fees* gives the fee-gatherer of every gradation an interest almost irresistible in the number and protraction of suits; it seduces him too often to overlook the extortion and various misconduct of his subordinates; it weakens the sanction of law in general by originating imputations on the integrity of the administrators of justice; and by raising the price of justice it operates as a premium on injustice, in closing the doors of the courts against those who cannot afford to purchase right.* Is it not a well known fact that the separation of the jurisdictions, especially that of Bankruptcy, is opposed by the highest judicial authorities, simply because they cannot spare the loss of fees from their aggregate income? Should this sinister motive be allowed to exist? If the Lord Chancellor, for instance, commuted all his various sources of emolument, viz. in a salary of £20,000. *per annum*, would not all parties gain by the commutation, and would such difficulties exist in the way of judicial improvements? The inconsistency of British legislators has been singularly displayed on this subject. Two bills have been introduced into Parliament for the regulation of the Irish Courts of Common Law and Chancery. The opposite principles of these two measures as to the payment of the officers of the respective courts are strangely anomalous. The Chancery bill maintains the principle of remuneration by fees, the Law Courts bill adopts the principle of fixed salaries, and abolishes

* Parliamentary Review. Session 1825. p. 737.

(with trifling exceptions) all fees! One principle is probably preferable to the other; it is therefore desirable that, whichever it may be, the legislature would ascertain it, and, having ascertained, would adopt it universally.

4. That the *practice* of the Court as regulated by *orders* should be immediately improved and corrected. This subject of remedial proposition, being technical, and not entailing any *inconvenience* on existing powers and interests, is ably treated by the Commission. But after a lapse of two years nothing has been *done*; no propositions have been carried into effect, though the publication of Orders by Lord Lyndhurst is daily expected. On this part of the recent inquiry Mr. Beames has pre-eminent merit as a Commissioner. Nothing can be so unmethodised or contradictory as the existing Orders of the Court of Chancery. The ORDERS are the *leges scriptæ*, or statute laws declaratory of its practice. They have been made from time to time, as noticed in the historical part of this volume, by different Chancellors, and often under special and varying circumstances. No general collection has ever been published under the sanction of the Court. Successive anonymous editions have at different periods issued from the press; but with the exception of the particular orders of Lord Clarendon and Lord Hardwicke, none have been published in an authentic shape! The excellent collection of them by Mr. Beames, in 1815, collated with the Register's Book, is the only general modern publication; but it is no *authority*: many of the orders therein contained are not in the register's book; many are obsolete, and many contradictory and at variance with the practice of the day. Mr. Beames, in his practical notes,

points out several *cases* decided without the slightest allusion to, or recollection of the Orders relative to the subject; and other cases decided with a professed ignorance that any orders connected with the points under discussion really existed! Case decides case; error is the prolific parent of error. Is the Order or the Practice to be adhered to *in future*?—Lord Eldon certainly does not solve the doubt in the case of *Boehm v. De Tustet*.* In that report are the two following extraordinary sentences: the context is not dislocated in the quotation—

“ Much of modern practice will, I fear, be found inconsistent with subsisting orders, without any contradiction of them by subsequent orders; and, upon principle, repeated decisions, forming a series of practice, as it must be, against an order, may with safety be taken to amount to a reversal of that order.”

“ It is impossible for this Court, in many instances, to support its present practice upon the notion that a continued practice does not nullify a written order, &c. that involving a serious question.”

From Lord Bacon's Orders, A. D. 1618, to Lord Eldon's in 1814, the total number is *One Hundred and Sixty-two* orders more or less important. Mr. Beames thus designates their present state: “ All the general editions are grossly faulty and imperfect, not excepting the last edition of 1739. * * * * * I have been able to add many important orders which *all* the foregoing editions have omitted; and to correct many

* 1 Ves. and Beam. 328.

“ errors, though most probably some may yet have escaped me, which had crept into those editions.” He suggests “ A complete revisal of the Orders, expunging the incompatible and obsolete, and making the whole one uniform consistent body, accompanied by the declaration, that the collection should be considered always in full force until repealed by future written orders, would be a work of incalculable benefit to the public.” These remarks were published in 1815, and in the subsequent dynasty of Lord Eldon, during twelve years, no authorised revision, publication or classification of the Orders was made !

On the gross and shameful advantages which the present technical system of the court allows the suitors in the mis-use of the machinery of equity to practise towards each other, no special detail will be now given, because a particular exposition would fill volumes, and has been ably given in numerous publications.* Moreover the author, with the opinion he has maturely and confidently formed from long experience and reflection on the practice of the court, considers any minute exposition a work of supererogation—because he is persuaded that no real remedy for the present evils of the Equity jurisdiction exists but in the *general substitution of public VIVA VOCE testimony for the present system of secret WRITTEN evidence.*

To propose thus boldly and decidedly this substitution, certainly involves a complete revolution in the *practice* of the Court. But the time is arrived when the princi-

* In none of the numerous and valuable pamphlets on Chancery abuses and procedure has this been more ably or disinterestedly done than by Mr. Vizard, an eminent London Solicitor, in a letter to William Courtenay, Esq. 1824.

ples of legislative and judicial science must and will triumph over the defective institutions of antiquity. The Roman and the Norman jurisprudence will not long pass current in Great Britain in the nineteenth century as the only circulating medium of justice. Time alone has rendered the fashion obsolete and the inutility palpable.

The simple perusal of a Solicitor's bill of costs for a suit in equity will alone expose the magnitude of the evils originating in the present system of written evidence. Enormous fees in the obtainment of evidence: *time* lost and consequent delay in all the stages of a suit, while these *paper* processes are slowly carried on: voluminous *briefs* to Counsel, in reams of documentary procedure, fees and refreshers proportionate: long recitals and repetitions in all interlocutory orders and decrees: inordinate taxation of the time and mind of the Equity judge in weighing such prodigious masses of evidence. In this denunciation the proceedings of the *Masters'* office are especially included. The system of *affidavit* evidence is notoriously infamous: the majority of parties in equity proceedings use that mode of testimony for the deliberate colour of falsehood, and extinguishing truth. Witnesses in Chancery are examined upon written interrogations prepared and signed by the Counsel of their respective parties. The execution of the commission is deputed to professional friends of the solicitors in the cause: the witnesses are of course previously *drilled*, and the result termed evidence, thus taken before subordinate judges, named Commissioners, is then the guide of the chief judge! The subject of all judicial decisions under the several names of judgment, order and decree, may be comprehended in

two propositions; 1. the state of the *law*, 2. the state of certain matters of *fact*. In relation to matter of *fact* decision has for its ground *evidence*. Written evidence necessarily begets delay, vexation and expence; the popular and moral sanction of publicity is far weaker than in orally delivered testimony. All the secret modes of judicial proceedings are only useful to those who invented them, viz. the Lawyers. Mr. Bentham has long since demonstrated that *publicity* is no less essential to secure the veracity of the witness than the probity of the judge. "Environed as he sees himself by a thousand eyes, contradiction, should he hazard a false tale, will seem ready to rise up in opposition to it from a thousand mouths. Many a known face, and every unknown countenance presents to him a possible source of detection, from whence the truth he is struggling to suppress, may through some suspected connexion burst forth to his confusion."* The anomalous variety of the systems of evidence in the different English courts of justice is most absurd. In Common-law litigation the testimony of the principals is not received. In Equity it is required in the preliminary stages of a suit. In Doctors' Commons all evidence is conducted in strict secrecy, and the Proctor sends down to the Country Solicitor for instructions to cross examine before information can exist, except from conjecture of the depositions in chief! Is there not one plain principle of common sense and experience in all inquiries of matters of fact *out* of court, viz. to see every thing that is to be seen? hear every body who is likely to know any thing about the matter; and especially those who are likely to know most about it, the parties: the reception

* French Judicial Establishments, p. 26.

of evidence does not surely pre-suppose or dictate credibility.*

Under the present system of equity examination *in secreto judicis*, it has been well remarked that more ingenious means could not have been devised for encouraging perjury. A short narrative of a frequent chancery suit may be cited from a distinguished jurist, "a thing in *Equity* under the name of a *Bill*, a volume of notorious lies delivered in, with three or four months time for a *first answer*, and, after *exceptions* taken of course, two or three months for a *second*,—then amendments made to the *Bill*, with more such delays, and more succeeding answers; then a *cross Bill* filed on the other side, and a *second* such cause thus mounted on the shoulders of the *first*—then volumes heaped upon volumes of *depositions*—then after a few years thus employed a *decree*. References to Masters: then in the course of a few more years thus employed, out of a dozen or two of the parties, one carried off by death, and then another,—and upon each death another *Bill* to be filed, and the same or a similar course of retardation to be done."† It would be far more honest, as once proposed, to write up over the doors of the Equity Courts, *Delay and Injustice in Law Proceedings sold here for ready money only*. Inquiries which occupy a quarter of a century in Equity are justly decided in the Common-law jurisdictions on *riâd voce* testimony within a year. One of the two systems must be superior to the other—one infamously defective. The idolators, however, of law as it is,

* *Rationale of Judicial Evidence, specially applied to English Practice*. vol. v. p. 743.

† Introduction to *Rationale of Evidence*, p. 121. Privately printed.

Worship both: the light of common-law is admirable—the darkness of equity law is past all praise! Lord Eldon retained his secret mode of written evidence in his own jurisdiction; directing, however, *issues* the verdicts on which were to be returned to his lordship on *viva voce* evidence! Yet Lord Eldon in 1812, in the House of Lords protested against the use of affidavits in Inclosure bills, arguing that if the Lords received affidavits as proofs of the facts stated to them, “they would give up the most effectual test of truth as to the allegations in a private bill,—the examination of witnesses *viva voce* upon oath; there being no doubt that, were it not for that examination upon oath before the Lords’ Committees, private bills might frequently operate towards the greatest injustice.” Is there one principle for the *Lords* and another for the *People*? An instance of the thoughtless inconsistency of the Commissioners under the late Chancery Commission has been already noticed (*ante* p. 371) in their general sanction of *interrogatories*, yet suggesting *viva voce* evidence in the proposed new court of Bankrupt Appeals. The same mixture of reason and prejudice may be seen in the First Report just made by the Commissioners of Inquiry into the administration of Criminal and Civil Justice in the West Indies (Jamaica.)*

“By the practice at Jamaica the Master is the Examiner; which we think some improvement; and if his powers were extended to take examination *viva voce*, and to examine to all the points he thinks material, not only in cases referred to him to report upon, but also as regards

* Ordered by the House of Commons to be printed. June 29, 1827.

" all examinations taken by him in chief, we conceive that
 " the administration of justice would be thereby improved.
 " But still we must confess, that even under this system, the
 " objection that the evidence has not been taken, or the
 " witnesses heard before the Judge who is finally to decide
 " the case, remains. It seems generally admitted, that if
 " this difficulty could be overcome, it would be a great im-
 " provement of the mode of proceeding in equity cases.
 " But with respect to England, it seems insuperable. At
 " Jamaica, if a professional person be appointed Chancellor,
 " perhaps some approach might be made with safety towards
 " the superior mode of taking evidence in common-law
 " cases, by providing, that in all cases of issues, when neces-
 " sary to try matters of fact, the trial of the issue should be
 " before the Chancellor himself. The danger of the real
 " object of the judge in directing it being mistaken in the
 " court below, which is too frequently the case, would thus be
 " avoided; and as it is only the conscience of the Chancel-
 " lor that is required to be satisfied in these cases, he must
 " be the best judge of the effect of the proof in his mind."*

The substitution of oral for written evidence does not
 pre-suppose the necessity of a Jury; with or without a
 Jury, the equity Judges would more expeditiously, cheap-
 ly and justly decide the important questions of their
 jurisdictions. The *real* remedy of the present abuses
 might here be immediately accomplished. It is a bold
 proposition; it supposes many vital alterations in the
 procedure of the Court of Chancery, but after fruitless
 attempts at improvement by orders and other inadequate
 means, this remedy must and will be adopted. Common
 sense points to it, and the great law authorities of the
 land evidently foresee the necessity. *Video meliora*

* Report. p. 107.

probaque, Deteriora sequor—the best they know and praise, the worst pursue. But even antiquity here is opposed to the “*Rome-bred*” mode of secret evidence; the Vestal Virgins were unveiled when their testimony was required.*

In relation to matters of *law*, how defective is the knowledge of the suitor, how blind the guides of the judges. The *laws*, and the judicial *decisions* on those laws, are of equal national importance to the public and the judge. And what is their state in England? Of the Acts of Parliament, Bacon long ago lamented “an accumulation of statutes, concerning one matter, so cross and intricate, that the certainty of the law is lost in the heap.” It was anciently observed that the greatest *number* of laws is always found in that commonwealth in which there is most corruption.† James I. in his speech upon his accession describes the numerous *discordant* laws then existing “divers cross and cuffling statutes.” The *obsolete* statutes have of course multiplied with time, and are continued as old connexions in the Statute book. A Parliamentary Report in 1796 has noticed *hotch potch acts* then long discontinued, but nevertheless abounding in the statute book. Prolixity and tautology are observable in every page throughout the whole. The House of Commons, in their treaty with James I. for the abolition of the Court of Wards, proposed a consolidation, that thereby “all such enactments as are profitable concerning one matter, may be

* Tacitus. Annals. b. 2. c. 8.—In the Prize and Admiralty judicatory of the American United States, the mode of collecting written evidence was, at the first sitting of the first Congress, abrogated, and the *vitâ voce* mode substituted. *Acts of the American States*, I. 120, 121, 134. A. D. 1794.

† And in modern times by the Quarterly Review, No. 53, p. 65.

reduced into one statute." Coke declared in his remote time, that "as they now stand, it will require great pains in reading over all, great attention in observing, and greater judgment in discerning upon consideration of the whole, what the law is in any one particular point."* The logomachy and ambiguity of statute idiom is proverbial. It has been truly said that the law of England is known to the body of the people only as a man knows a post in the dark—by running his head against it; and that by the multiplicity and contradiction of the statutes, the English Government might be suspected of wearing the mask of Caligula, who according to Dion Cassius, wrote his laws in a very small character, and hung them upon high pillars, the more effectually to ensnare the people.† "These differences were long since observed, and a great many instances given upon every particular head; and yet I do not find that care is taken to have them rectified. The common placing of our Statute

* "If acts of Parliament were after the old fashion penned, and by such only as perfectly knew what the common law was before the making of any act of parliament concerning that matter, as also how far forth former statutes had provided remedy for former mischiefs and defects discovered by experience, then should very few questions in law arise, and the learned should not so often and so much perplex their heads, to make atonement and peace by construction of law between insensible and disagreeing words, sentences, and provisos, as they now do."—*Coke's Reports, Part ii. Pref.*

† In 1607, Bishop Nicholson enumerating the various published collections of the Statutes, says, "that in comparing these editions with the M.S. Rolls of Parliament several glaring imperfections are observable. 1. Divers acts in print, which are not in the roll. 2. Many in the Rolls never yet printed. 3. Divers clauses omitted in the print, which occur in the rolls. 4. Many considerable variations. 5. Some statutes pretended to be enacted, and afterwards dis-affirmed, and yet printed. 6. Whole Parliaments repealed and made void by subsequents."

Laws, is certainly of great and necessary use ; especially since they grew up to that vast bulk wherein we now have them. But when these methodical abstracts are published, it is requisite that a more than ordinary care be taken in examining the numeral quotations, and short references, otherwise the mistakes, into which the reader may be led, are unspeakable and endless."* Such was the reported state of the written law centuries past.

In the subsequent extraordinary increase of the statutes, and excepting a *few* acts of Mr. Peel, insignificant compared with the bulk of the statutes at large, no consolidation or systematic arrangement has yet been even attempted ; a mountain of confusion and contradiction has therefore arisen. The law has become a terror instead of a security to the subject. No one can take a legal step without the fear of its snares—

“ Within the vast reach of the huge statute’s jaws—

————— Methought I saw

One of our giant statutes ope his jaw

To suck me in.”

Publicity formerly was considered essential. The Laws of every Session of Parliament were antiently proclaimed by the King’s Writ to the Sheriff, which may be seen at the end of the Acts of 31 Edward III., and elsewhere.† By the 25 Edward I. it was directed that the

* Niebolson’s Historical Library, ed. 1697, part ii. p. 154. See also many excellent remarks in Mr. Millar’s Inquiry into the present state of the Civil Law of England, 1825.

† See Archæologia, vol. i. p 196.—Rex vicecomiti, &c. salut. Quaedam Statuta, Ordinationes, per nos, Prælatos, Duces, Comites, Barones, et Communes regni nostri, &c. pro communi utilitate dicti regni facta tibi mittimus, quod in comitatu tuo, et aliis locis, ubi melius expedire videris, publice proclamari facias.—31 Ed. iii.

charter of liberties be sent to all Sheriffs, Justices in Eyre, and other Magistrates throughout the kingdom for publication to the People; that copies of them should be kept in Cathedral Churches, and there publicly read twice in the year, accompanied by a solemn sentence of denunciation against all who should infringe them.* The legislative measures of Mr. Peel in consolidating some of the *Criminal Laws* are highly praiseworthy: the merit of first drawing public attention to this important subject is due (though not so fully acknowledged as it might have been) to Sir Samuel Romilly and Sir James Macintosh; but as the *will* to reform is seldom allied to the *power*, Mr. Peel's merit is correspondingly great. He has, however, scarcely commenced his labours, nor is it possible that the mode in which he slowly proceeds can effect any great good. No amateur or unpaid labours can effect much in this stupendous undertaking. It never has, in the history of any nation far less law-ridden than England, been successful. The reduction of the laws to a CODE is not a *desperatum opus*, as the collection of statutes by Mr. Hammond, and the Digest by Mr. Tyrwhitt and Mr. Tyndale, alone attest what the industry of individuals can accomplish—the latter of whom have arranged and digested above 2,000 statutes scattered over a period of nearly 600 years. The *revision* however of the great body of the law is a more responsible and difficult task. This important and long

* “ Before the use of printing and till the reign of Henry 7th, our Statutes were all engrossed in parchment, and by virtue of the King's Writ to that purpose, proclaimed openly in every County: a method which was undoubtedly of excellent advantage to the subject, and what some of our greatest men of the Law have thought worthy to be restored.”—(*Inst. Part ii. p. 526.*)

needed labour can only be performed by a COMMISSION of a select class of legal men remunerated for the purpose.

Barrington in the appendix to his "Observations on the more ancient Statutes," shews that the failure of a *Committee* appointed for repealing certain statutes of Elizabeth was owing to its being a work of time and deliberation, which that flux body was not calculated for, the lawyers especially not affording time for the necessary investigations and labour. Barrington proposes—"That two or more barristers should be appointed, who, from year to year, might make a report to the Privy Council, as likewise to the Lord Chancellor, the Master of the Rolls, and the twelve Judges, of a certain number of statutes which should either be repealed or reduced into one consistent act. It may be proper also that they should, at the same time, transmit such statutes as they propose to substitute in the room of those which seem liable to objection." Such a permanent and remunerated Commission can alone perform the necessary revision, as a reference to the history of the Russian, Danish, French and North American jurisprudence distinctly proves. This Commission should possess a union of technical and general knowledge. Lawyers, particularly Barristers, are *not* competent singly to accomplish such an undertaking. The tendency of the profession to narrow and pervert the mind, especially in those exclusively absorbed in its practise, has been long observed. The scholiasts and antiquaries are rarely versed in philosophical science. These remarks however will not be misinterpreted.

The importance of general erudition to the profession of the law has been ably and elegantly argued by many

great Lawyers,* and intelligent jurists, themselves not only successful practisers of the law, but remarkable for the variety and accomplishment of their knowledge. To the proposed Commission should be added not only men who *make* and *practice* the law, but persons of eminent mercantile intelligence and experience, who *use* the law and for whom the law is made. And why should not such a Commission be remunerated, and liberally paid? In an annual national expenditure of FIFTY MILLIONS, surely the improvement of the *Laws* and Judicial Establishments, the safeguards of property, might be considered. And should not the value of the active and voluntary intellect of the country at large be called in to aid this great work? Before offering any propositions or codes for the discussion of the Legislature, why should not the proposed Commission, in imitation of the distinguished framers of the CODE NAPOLEON, submit their plans to the whole kingdom, through the medium of the press, and thus secure the general and individual wisdom of the nation? Are we too bigoted and proud to learn wisdom of a conquered foe; shall we not rather carry away the most glorious trophies of victory in adopting and improving what is superior in the *Laws* of France? Mr. Peel *may* eclipse the renown of the Duke of Wellington.

Some few observations may here be allowed on the illiberal and absurd aspersions during the last Chancery, which attributed on every petty opportunity the abuses and delays of Chancery to *Attorneys*, and also on a late principle in the legislature which has ill advisedly degraded Solicitors from numerous offices they

* *Memoirs of Lord Kames*, vol. i. p. 15.—Cicero, *De Oratore*, lib. i. Lounger, No. 100.

formerly exercised. With reference to the temptations of the profession, the country does not contain a class of more honourable or intelligent men than may be found in *that* branch of the profession; the evidence given before the Chancery Commission disproves the sinister interest they are supposed to have in the abuses of the law, while its value and boldness display their integrity and professional knowledge. Anciently Attorneys took an oath of office not to increase fees, but to be contented with the old charges.* But this oath was modified by the statute 2, Geo. II, c. 32. Commissioners for inquiries into fees empannelled experienced Attorneys and Solicitors.† The amendments of the law in other nations have proved that honest lawyers are interested in reform. Has the quick transit of goods decreased the bulk of carriage?‡

* See Rules and Orders for the Court of Common Pleas, Michaelmas Term, 1654.

† In the Monthly Intelligencer of the Gentleman's Magazine (vol. 4. p. 625) November, 1734, is the following paragraph—"The Commissioners for enquiring into the Fees, &c. of the Court of Chancery, met, and a *Jury of respectable ATTORNEYS and SOLICITORS* returned by the Sheriff of Middlesex, being sworn, Sir John Gonson, recommended to them "to enquire, 1. What officers, clerks and ministers, or their substitutes of "right belong to the several offices of Masters in Chancery, Accomptant General, and affidavit office, 2. What Fees, &c. every of these officers, or "their substitutes ought to take, or have of late unjustly extorted."

‡ Napoleon proposed an ingenious check on Lawyers,—“Lawsuits are an absolute leprosy, a social cancer—My Code has singularly diminished Lawsuits, by placing numerous Causes within the decision of every individual. But there still remained much for the Legislator to accomplish. Not that he could hope to prevent men from quarrelling: that they have done in all ages; but he might have prevented a third party in society, from living upon the quarrels of the two others, and even stirring up disputes, to promote their own interest. It was therefore

In reference to matters of *law*, another glaring defect of our equity system especially exists in the innumerable *unofficial* and contradictory nature of the judicial decisions—termed *cases*. *Equity* was formerly established as an avoidance of precedents, and to adjudge every question before its tribunals on its separate and distinctive merits. The Courts of Chancery are now immense store houses of *Case-law*. A clever writer in the *Jurist** justly reflects on the present “conflict of legal doctrines, of schism on the bench, of text marshalled against text writer, and judicial *dicta* opposed to judicial *dicta*, of law warring with law, and decision jostling decision.” A most amusing but appalling collection might be made of dissonant cases and reports. Lord Bacon in his time thus eulogises Coke’s Reports: “To give every man his due, had it not been for Sir E. Coke’s Reports, which, tho’ they may have errors, and some peremptory and extrajudicial resolutions, more than are warranted, yet contain infinite good decisions and rulings over of cases; the law, by this time had

my intention to establish the rule that Lawyers should never receive fees, except when they gain Cases. Thus, what litigations would have been prevented! On the first examination of a cause, a lawyer would have rejected it, had it been at all doubtful. There would have been little fear that a man, living by his labour, would have undertaken to conduct a lawsuit, from mere motives of vanity: and if he had, he would himself have been the only sufferer in case of failure. But my idea was opposed by a multitude of objections, and as I had no time to lose, I postponed the farther consideration of the subject. Yet I am still convinced, “that the scheme might, with certain modifications, have been turned to the best account.”—*Memorial de Sainte Hélène*, vol. iv. p. 7. p. 200.—*Real* costs instead of *taxed* costs would answer the purpose.

* *Jurist*, No. iii. art. Certainty of the Law.

been almost like a ship without ballast.'* The bulk of our ballast has now well nigh sunk the vessel of justice. Chancery is no longer a Court of *Equity*, but of *Cases*. And not merely are the cases contradictory, but the judges vary in the characters they give to the Reports.† The following opposite judicial observations on the authority of cases or precedents in Equity may be also cited.

Certainly Presidents are very necessary and useful to us, for in them we may find the reason of the Equity to guide us; and besides the authority of those that made them is much to be regarded; we should suppose they did it upon great consideration and weighing of the matter; and it would be very strange and very ill if we should disturb and set aside what hath been the course for a long series of time and ages.

Lord Keeper Bridgman.

I wonder to hear of citing of Presidents in Matters of Equity; for if there be Equity in a case, that Equity is an Universal Truth, and there can be no President in it: so that in any President that can be produced, if it be the same with this case, the reason and equity is the same in itself; and if the President be not the same case with this, it is not to be cited, as not being to the purpose.

Lord Chief Justice Vaughan,
argument on the case in
Chancery, TER. PASCH.
22 ch. ii.

* Prynne comments on the *Institutes* by the author of the *Reports*; "I never met with so many misrecitals, mistakes, misvouchers of Records in any author, as I have done in him!"—*Writs, Part iv. Preface.*

† *Videlicet.*—Mr. Justice Buller, speaking of Barnes's notes, said, "this writer has indeed, in general, reported the practice of the Court with accuracy."

Does not this miserable state of justice require revision? If *cases* are authorities, should not some periodical, authorised, or abridged publication of judicial decisions be provided? "The late Lord Hardwicke said in the hearing of a barrister, who is an acquaintance of mine, that he wished the arguments used in decrees and judgments were published every year, and signed by the several judges who pronounced them."*—Lord Mansfield, whose great mind did not "stick at trifles," was so perplexed with these various changes of the law that he once uttered the extraordinary proposition that "it is of much more consequence that mercantile questions should be fully settled and ascertained, *than which way the decision is.*"† If Lord Eldon had thus cut the Gordian knot of equity, the suitors for his lordship's judgments might have been earlier accommodated, and perhaps better pleased, on the principle in the sacred writings that "hope deferred maketh the heart sick."

How readily this glaring defect may be remedied is palpably displayed in the numerous laborious abridgments and digests by intelligent barristers of all courts.

Mr. Justice Heath. "Many of the cases reported in Barnes are *not law.*"

Lord Kenyon said, "Carthew is in general a *good* reporter."

Lord Thurlow said, "Carthew and Comberbach are equally *bad* authority."

Easter Term, 3 W. and M. the whole Court declared, "that Sir W. Jones was very *judiciously* written."

Lord Nottingham, speaking of the same work, said, "there is no book of law so *ill corrected*, or so *ill printed* as this."

* Biographical Anecdotes, vol. 1. p. 391.

† Buller, v. Harrison, Cowp. 567.

Bridgman's Equity Digest may be instanced as an extraordinary evidence.* It consists of three crown octavo volumes, and the unlearned reader will scarcely credit that the last volume contains a *repertorium* and alphabetical list of cases which alone occupies *seven hundred and one pages!* The infinity of Equity decisions may be thus conceived by those *lay-men* who are fortunately not doomed to wander in the legal labyrinth. Mr. Bridgman in his preface sensibly remarks—"In every state, where the laws and decrees of the empire have increased to a pile so stupendous, as to threaten their own destruction by their massive weight, the first object of the legislature has been to form a design for reducing the great body of those pandects and decrees into a narrow compass, and more regular system, for ordinary study and enquiry."

That cases and decisions *are* of vital importance to the ends of justice, the following great legal authorities attest:—

EQUITY in Law is the same that the spirit is in Religion, what every one pleases to make it; sometimes they go according to conscience, sometimes according to Law, sometimes according to the rule of Court. Equity is a roguish thing; for law we have a measure, know what to trust to; equity is accord-

The discretion of a Judge is the law of Tyrants: it is always unknown; it is different in different men; it is casual and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and

* Analytical Digest of the Reported Cases of the Courts of Equity, 1804.

ing to the *Conscience* of him that is Chancellor, and as that is larger and narrower, so is equity. It is all one as if they should make the standard for the measure, we call a foot, a Chancellor's foot, what an uncertain measure would this be? One Chancellor has a long foot, another a short foot, a third an indifferent foot: it is the same thing in the Chancellor's *Conscience*.

*Selden. Table Talk, art.
Equity, 1660.*

passion, to which human nature is liable.

*Lord Camden, argument
Doe, v. Kersey, Pasch.
5 Geo. iii. 1765. C. P.*

The absolute necessity of rules and records of decisions is supported by the great authority of Lord Bacon—"It was upon just grounds of reason, that the *album* of the Prætor came into use; that is, the table in which he published the rules and *formulae*, according to which he was to administer justice. And after this example, the judges in our courts of equity should, as far as it is practicable, lay down for themselves certain rules, and make them known to the public. For, as that law is the best which leaves least to the discretion of the judge, so that judge is the best who takes the least discretion to himself."* Such has been the barbarous and the long existing perplexity of the English law. Could such seed bring forth good fruit? If the Court of Chancery has been thus inadequate in former times to the demands

* De Aug. Scient. lib. viii. cap. 3, aphor. 46.

of justice, what must be its inadequacy in the present times with the infinitely diversified concerns of the nation?

Oh! England, bound in with the triumphant Sea,
Whose rocky shore beats back the envious Siege
Of wat'ry Neptune, is now bound in with shame,
With inky blots, and rotten Parchment Bonds.
That England, that was wont to conquer others,
Hath made a shameful Conquest of herself.

The technicalities of Chancery procedure, their enormous cost and delay, establish a complete tyranny of the unprincipled and wealthy over the honest and poor, according to the measure of the *purses* of the suitors.

The multiplication of the Judges of Equity has been frequently suggested. The public can scarcely be aware of the present multitude of jurisdictions and judges in every corner of England. It is an equalization and subdivision of *work* which is needed, and some regulation by which the ill consequences shall be prevented of Barristers practising in two courts having simultaneous sittings.

A *preliminary* measure also must be adopted, of disposing of all existing arrears by some temporary and competent commission. The Courts must be brought to the Suitors, instead of the latter to the former. *Westminster* and *London* may be the town residence of equitable justice, but let her visit the *country* also. The local jurisdictions must be multiplied and amended. The *appeals* from Court to Court must be terminated, by which litigation will not only be "disposed of" more

quickly, but also in a great degree prevented.* "Our laws must be divested of their Norman rags."† The idolators of abuses and superannuated institutions (most of whom have motives too strong for truth to shake) are not expected to agree with these propositions.

But is the reform of the Court of Chancery to be left again to the whirlwind of revolution? None are so interested in the immediate removal of such grievous defects as the highest persons of the jurisdiction, for if an early remedy is not provided, if the *system* is not changed, party spirit and the public indignation will revenge existing evils on the heads of the administrators of the court, instead of seeking the cause in the constitution of the judicature.

The general diffusion of Education and consequent increase of knowledge, has given to public opinion more than giant strength or Herculean power; and if the civil and judicial institutions of the nation be not moulded afresh to adapt them to a state of society of which our forefathers did not even dream, that giant power will be fearfully and dreadfully employed in breaking to pieces and rending asunder that which is good with that which is evil, confounding things consecrated with things desecrated, and involving in confusion and ruin every thing in our constitution truly beneficial and most worthy of preservation.

* "Causes bandied about, projected from the metropolis by a centrifugal, and drawn back again by a centripetal force. Fragments of causes, projected now and then under the name of *issues* from the Court of Chancery and the Equity side of the Exchequer to a common law court, and the re-absorbed, are to the others what comets are to planets."—*Bentham's Rationale*, vol. iv. p. 139.

† St. Edward's Ghost, or Anti-Normanisme, 1047.

To conclude with the memorable and parting words of
 Coke at the end of the fourth institute—"I shall heartily
 desire the wise hearted and expert builders (Justice being *Architectonica Virtus*) to amend both the
 method or uniformity, and the structure itself, wherein
 they shall find either want of windows, or sufficient
 lights, or other deficiency in the Architecture whatsoever:
 and we will conclude with the aphorisme of that
 great lawyer and sage of the law, Edmund Plowden,
 "BLESSED BE THE AMENDING HAND."

APPENDIX.



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APPENDIX.

No. 1.—Page 158.

Draft of an Act “ Touching the Chancery,” prepared by the Commonwealth Law Committee, and submitted to the House of Commons, 1653.

Be it enacted by the authority of this present parliament, that the court of chancery shall hear and determine all causes of equity in one certain public place, to be appointed by the judge or judges thereof, from time to time, and not elsewhere : and that there shall be in the said court, a chief clerk, to be chosen from time to time by _____, who shall, from and after _____, make forth all process, and all commissions, and other things, issuing out of the said court, and shall take the returns of the same, and file them : And also all bills, answers, pleadings, and depositions in the said court, and enter, and keep all the records thereof, and matters filed, (as of record) there : and shall have such and so many under clerks for writing and dispatch of business under him as shall be allowed and approved by the judges of the said court from time to time, who shall administer an oath, both to the chief clerk and under clerks, to deal faithfully and uncorruptly in their places : And out of the fees payable to the chief clerk shall appoint how much the under clerks shall have for their pains, where the fees are not ascertained to such under clerk in the table of fees herewith published ; which chief clerk and under clerks shall constantly attend, and exercise their places in person, and not by deputy : And upon the avoidance of the chief clerk's place, the under clerks shall from time to time suc-

ceed according to their antiquity, if they be not found
uncapable of executing the said office: And all the records
and matters filed on record in the said court shall, from and
after _____, be in the custody of the said chief clerk,
who is hereby appointed to take the same in his charge.

SECT. II.

That there shall be such and so many attorneys of the said court as the judges thereof shall from time to time appoint, who shall be under clerks to the chief clerk, and take the like oath as attorneys at the common law; and until such appointment be made, the six clerks and clerks of the petty bag, and the under clerks to the six clerks in their office, and to the clerks of the petty bag in their office, shall be attorneys of the said court, who shall solicit their clients business, and instruct and assist them throughout the course of proceedings in their causes.

SECT. III.

That the process for appearance in the said court of Chancery shall hereafter be by summons, and not otherwise, which summons shall be thus:—

" The keepers of the liberty of England, by authority of parliament, to A. B. of C. in the county of D. We command you to satisfy R. D. of F. concerning the complaint in his bill, a copy whereof we send you, or within fifteen days, after notice hereof, to appear and answer the same. Given under the great seal of England, the day of .” And the name of the party that made the summons, and the true party that sued it forth, or the attorneys name, shall be underwritten.

SECT. IV.

That a plaintiff may put the names of all defendants into one summons, and that (and all other process of the said

court) shall be sealed open : And the showing the summons where the defendant is present, and leaving a fair copy thereof with him or her, and a copy of the bill ; or leaving a copy of the summons and bill at his or her habitation, with some person there, (if any be to be found,) or else at the door of the house, (if no person be there to be found,) shall be a good service on that defendant : And the party serving the same shall indorse the summons with the time and manner of service, and make oath thereof before some justice of peace or master of Chancery, and return it whence it issued, and the bill shall be duly filed at or before the return of the summons. And if the defendant will examine his copy with the bill filed, he may do it without fee ; and, if desired, like examination of copies of other pleadings which are filed shall be made without fee.

SECT. V.

That from and after the establishing of county registers, any person that exhibits a suit in equity for any manors, lands, tenements, or hereditaments, shall not have the benefit of any decree to be made touching the same, as against any purchaser, or other claiming interest in or profit out of the same for valuable consideration, but from the time of the entry of such his claim, suit, or decree, in the registry where the same do lie.

SECT. VI.

That the defendant being duly served, and not appearing, shall forfeit forty shillings to the plaintiff, and twenty shillings to the commonwealth : And process shall be made forth, directed to the sheriff, coroner, or such other person as the plaintiff shall name, to attach the defendant by body, lands, and goods, to enforce him to appear and answer, returnable at such time as the plaintiff shall desire : And if the defendant doth pay the aforesaid forfeitures and charge of the

process, and under his hand, on the back side of the said process, declare, that he will appear at the return thereof, and within eight days after make his defence; or otherwise shall make oath before the sheriff or coroner, (who are hereby enabled to take the same,) that he had no notice of the said summons, with such declaration to appear and answer as aforesaid, then the said process shall not be executed, or being executed, shall be discharged; And such process, either executed, or thus indorsed, or where it cannot be executed, shall, at the return-day, be returned whence it issued, and be there filed: And in case the body cannot be attached, and issues be returned upon lands or goods, the same shall be to the value of four pounds, which shall be forfeited for not appearing, one half to the commonwealth, the other to the plaintiff.

SECT. VII.

That where the person of the defendant shall not be attached upon this process, and in custody, or the said process indorsed as aforesaid, or the defendant shall not appear on the return thereof, the like process shall be sent to all the sheriffs and coroners of England, and such others as the plaintiff shall name: And the defendant shall also stand disabled to prosecute any suit in any court, (except in causes where issue is joined, and there only to trial,) and the court may also sequester the thing in demand by the bill from the party not appearing, until appearance and answer, except it appear to the court by oath, that, (at the service of the summons,) the defendant was not within this commonwealth; in which case the court may give such time for appearance and answer as shall be meet.

SECT. VIII.

That where any defendant hath declared under his hand, that he will appear as aforesaid, and appeareth not, or is in

custody for not appearing, or having appeared for not answering, or not answering sufficiently, the court shall order him to answer, or the bill to be taken confessed; and if, within eight days after notice of that order, the defendant shall not answer accordingly, the said cause shall be put in the book of hearings, and such decree made thereupon as if the defendant had confessed the equity in the bill: And if upon the said hearing it shall appear that the said defendant ought by answer to discover any thing for the plaintiff's relief, the court may inforce the same, by strict restraint of the said defendant, and fine to be imposed by the court; one half thereof to the commonwealth, the other to the plaintiff.

SECT. IX.

That where a defendant doth appear, and doth not answer, plead, or demur within eight days, he shall forfeit five pounds for the first eight days default, to be paid to the plaintiff, and ten pounds for every eight days default after, one half to the plaintiff, the other half to the commonwealth: And the party plaintiff, may nevertheless in such case take forth such process as before to attach the defendant by body, lands and goods; and in case his body be attached, and it doth not appear that he hath lands and goods, sufficient to answer the plaintiff's demand, his body shall be kept in safe custody until he hath paid the costs and forfeitures, and given good security, (to be taken in the name of the plaintiff, and approved by the sheriff, or such party as doth attach him,) to appear upon the return of the process and answer, and not depart without the leave of the court.

SECT. X.

That any justice of peace, or a master of the Chancery in ordinary, may take an answer upon oath, signed with the defendant's hand or mark, and shall deliver the same himself, or transmit the same, close sealed up, to the chief clerk;

and upon such delivery made, or (transmitting, with an oath, that it was not altered since it was so sealed up,) the same shall be received and filed by the said clerk as if it had been sworn in court or returned by commission: And a justice of peace may also take an affidavit, so as he put his hand and seal thereto, and name the place of his habitation: and the same may be made use of in any court, as if the same had been sworn before a judge of the same court, but no rasure or interlineation is to be made in any affidavit whatsoever.

SECT. XI.

That where the plaintiff or defendant do cause answers, pleas, demurrers, replications, or rejoinders, to be filed by the chief clerk, they shall give to the adverse party, or leave with his attorney for him, a true copy of the same, which he shall have without fee.

SECT. XII.

That where any defendant appears upon the return of summons or process, if the bill exactly agreeing in substance with the copy delivered be not filed, he shall have his full costs, to be taxed by the chief clerk, without further attendance than the next day at noon after the return-day, and not to appear again upon suit of the same party before the costs paid, and upon new summons.

SECT. XIII.

That where any defendant pleads or demurs, if it be in term time, the same shall be determined within the fourteen days after the same is put in; if in vacation-time, either before or in the first week of the next term; to which end, the judges of the court shall appoint certain times for the determining the same, not interrupting the course of hearing other causes, and shall upon the first hearing of a plea or demurrer, give their positive order therein without a second

hearing: And where any plea or demurrer is over-ruled, the defendant shall pay forty shillings for a fine to the commonwealth, besides the plaintiff's costs.

SECT. XIV.

That when a sufficient answer is put in, the plaintiff shall reply within eight days; and if it be insufficient, shall within eight days put in exceptions thereto, or enter it in the register's books for hearing upon the answer, otherwise the cause to be dismissed without any motion, and the chief clerk to tax full costs within the time aforesaid, and no dismission-fee to be paid by the defendant in this or any other; but if the plaintiff will in such case pay full costs and charges, he may exhibit a new bill.

SECT. XV.

That references to particular masters in Chancery be forborn, and there shall be from henceforth but six masters of the Chancery in ordinary, to be named by the parliament, and new ones elected at the end of every third year, and to have by the year; whereof three shall sit daily at some certain public place, so long as any thing depends in reference before them, and shall have a register to attend them; which three masters, or two of them at the least, shall hear and report all things under their hands which come before them, always ending one cause before they begin another.

SECT. XVI.

That for the orderly hearing of causes and motions in court, and references before masters of Chancery, the register shall keep two distinct books, in one of which any party who hath a cause ready for hearing or motion shall enter the same; in the other of them, every person who hath any reference to the masters of the Chancery shall enter the

same in the register always (in the margin) figuring the books by numbers according to the time of their entry, and the party entering every such cause or reference subscribing his name: And there shall not hereafter be any motions in court for references of insufficient answers to bills or interrogatories, or touching contempts, or for scandal, or impertinency in bills or answers; but any party desiring a reference in any such case may enter the same in the said book of references, to be heard before the masters.

SECT. XVII.

That if the judges, or masters of Chancery, shall hear any cause, motion, or reference, in any order than as they are set down in the said register's books, they shall forfeit twenty pounds, one half to the commonwealth, the other half to the party whose cause should have been heard in due course; and the register to forfeit five pounds, (to be paid in moieties as aforesaid,) that shall alter the number in the said book, except it be by consent of parties, or where neither party doth attend, and then such cause to be put at the end of all the causes then entered in the said books respectively.

SECT. XVIII.

That upon a second insufficient answer, the party shall be committed and kept within the prison until he make a sufficient answer.

SECT. XIX.

That in case exceptions be taken to a report requiring the opinion of the court, the same shall be entered in the book for motions, and the party excepting shall deposite three pounds with the register; and if the court shall judge the exceptions good, it shall be restored him, and the adverse party shall pay him forty shillings cost; but if his exceptions be adjudged frivolous, the commonwealth shall have twenty

shillings of the three pounds, and the adverse party the residue.

SECT. XX.

That after a defendant hath once appeared, he shall perfect his answer and join in commission, and attend the hearing upon notice to his attorney or known solicitor, without any more process, and the plaintiff to do the like after he hath replied.

SECT. XXI.

That in every case where commissions are prayed to examine witnesses, duplicate commissions shall issue at the request of the defendant, to be executed in such counties as either party shall think fit, which may be executed in any place, and returnable within sixty days from the date; and at the return, publication to pass of course, and either party or his attorney to be at liberty to enter the same into the register's book of hearing; and if no commission issue, and witnesses be examined in court, the cause shall be published within sixty days from the time of the replication, and then to be entered with the register as formerly: But where commissions are to be executed beyond the seas, the chief clerk shall set down a time for return and publication, and either party may produce, or by process of court enforce such witnesses to testify at the hearing, as he could not produce within sixty days to be examined, so as notice be given in writing to the other party (before publication) of such witnesses names and places of abode, and to what points they are to be examined at the hearing; and where the court gives order to any to examine parties or witnesses, the same is to be done by virtue of that order, without any commission, and the charges of commissions in such case are to be spared.

SECT. XXII.

That where witnesses shall be examined to prove a contempt, the party accused may likewise examine witnesses to clear the same.

SECT. XXIII.

That commissioners for examination of witnesses shall take an oath before execution of any commission, to execute the same faithfully and impartially, which each commissioner is impowered to administer to the other; and the clerks attending such commissioners shall take an oath, (which is to be administered by the commissioners,) to write down the depositions of the witnesses truly and indifferently without partiality; and every witness shall be sworn and examined, and his deposition put in writing in presence of the commissioners, and not elsewhere.

SECT. XXIV.

That after publication, either party, or any of them, may view the depositions of either side, and not be obliged to take copies of any more than he shall conceive material, so as he take not the part of a deposition to one interrogatory; and plaintiffs and defendants may (if they agree) take but one copy of all or any part of the depositions, and make use of the same.

SECT. XXV.

That no stay shall be made of any proceedings at the common law, upon a bill of exchange between merchants, nor of execution upon a judgment at law upon a bill exhibited after the said judgment, without a defeazance in writing of such judgment, until the final hearing of the cause.

SECT. XXVI.

That no stay of any proceedings at law shall be but upon

equity confessed in the parties answer who is stayed, or where the party stayed is in contempt for not answering, or not sufficiently answering to some material charge; and in such case the stay to be void upon clearing the contempt, or sufficiently answering without any further order.

SECT. XXVII.

That where any cause comes to hearing, the judges shall determine the same without delay or any second hearing; but if both parties consent, the cause may be put the last in the register's book of hearings, or where the parties consent to a reference, the court may refer it.

Provided, That no judge before full hearing doth move either party to consent in either of the said cases; and where any reference shall be made by consent of parties, they shall not have power to countermand it, and an award or arbitrament made thereupon shall be final, as if the reference were made by order of court, and shall be sufficient ground for a decree: And the judges shall sit constantly, as well in vacation as term, until all causes and motions in the register's books be heard and determined; and they shall in all cases pronounce their decree presently in court at the hearing, save in cases of very great difficulty, and there not to exceed ten days, and not to hear council a second time in the said cause.

SECT. XXVIII.

That the register shall not execute his office by deputy, (except in case of sickness, and then the court to appoint one) and shall in his draught of orders shortly express the sense of the court (as rules in the courts of common law) without any unnecessary preambles; and if the register draw up any order contrary to, or not agreeing with the order pronounced in court, he shall answer the party grieved thereby his full costs and damages, to be given him by the

court, or to be recovered by action upon the case at his election.

SECT. XXIX.

That the register shall upon every decree pronounced in court, enter the very words of the decree in his book, without any interlineation, and publicly read the same in court, at that sitting of the court to be there allowed; and the judges shall sign all decrees publicly in court, at certain times to be appointed for that purpose, which decrees are to be drawn up forthwith after the decree pronounced, and that from and after no suit shall be admitted in any court of equity, for obtaining any decree for any manors, lands, tenements, or hereditaments, upon any pretence of trust or agreement whatsoever, which shall not appear in writing under the hand of the party who ought to perform the same, or by some deed or will in writing.

SECT. XXX.

That in all cases where a plaintiff is dismissed, the defendant shall have full costs; and where the plaintiff hath just cause of relief, the plaintiff shall have full costs, saving in case where he might have had the like benefit without suit, and there he shall have no costs, but pay the adverse party full costs, and a fine of forty shillings to the commonwealth; saving also where the defendant by answer submits to the judgment of the court, and claims nothing to his own use, in which case he shall pay neither costs nor fine, but the plaintiff to pay him costs if the court find cause; and where the plaintiff is relieved for part, and dismissed for part, either party to pay costs to the other; and if a plaintiff be relieved against one or more defendants, and not against others, such others shall have their full costs; and where any is to pay costs and is not able, such party shall be sent to the workhouse to work during the pleasure of the court, (one half of

the benefit of his work to go towards payment of costs) or be whipt, or both, at the discretion of the court: and no person is to be admitted to sue as a poor man, unless he bring a certificate from some justice of the peace, counsellor or serjeant at law, or judge of the county judicature, of his poverty and the justice of his case.

SECT. XXXI.

That in all cases where a plaintiff is dismissed, he shall pay a fine to the commonwealth of twenty shillings; and if the plaintiff hath a decree against any defendant, such defendant shall pay a like fine to the commonwealth, where he pays costs to the adverse party; and a defendant for every insufficient answer (after the first) shall pay a like fine to the commonwealth, and a plaintiff a like fine for frivolous exceptions: and every person judged in contempt, or that shall unnecessarily trouble the masters of the court, by entering a reference before them in the book, shall pay a like fine to the commonwealth.

SECT. XXXII.

That the shewing a decretal or other order of the court under the register's hand to the party who is to observe the same, and leaving a copy thereof with him, or leaving the same at his dwelling with some person there, (if any be to be found) or otherwise at the door of the house, shall be a sufficient service, and the party shall be in contempt, if he yield not obedience thereunto within eight days, and thereupon process may and shall issue to attach his body; and if the order be to pay money, then also to levy the same of his goods and chattels, lands and tenements, as upon a judgment of the common law, and direct it to the sheriff or coroner; and the sheriff and coroner in execution of their offices, upon process forth of Chancery, shall have the same power as in execution of process at common law, and levy their

own fee, besides the money for the party or commonwealth, and behave themselves as in cases of other executions: And all process of summons under a penalty, and the course of arresting, by any other writ of attachment than is by this act appointed, attachment with proclamation, commission of rebellion, messenger and serjeant at arms (as to the execution of any process of the said court) shall be henceforth forborn, and the writs of executions, of orders and decrees, and injunctions under seal, to be no more used.

SECT. XXXIII.

That where any man is attached for breach of a decree, he shall not be set at liberty but by special order of the court; and in all such process of attachment it shall be mentioned that it is for breach of a decree.

SECT. XXXIV.

That there shall be no more money ordered to be paid into the court, unless by consent of both parties, and no fee shall be paid for paying out the money already in court: And the party who ought to have damages for detaining any money which is brought into court, shall have it during the time the money remains in court, to be paid by such as were the cause of bringing it into court.

SECT. XXXV.

That where any party may now take forth a *subpœna* of course to bring in a deed, the register shall grant an order of course under his hand, and like order where the court directs it, and the *subpœna ducens tecum* to be forborn; and the register shall take, for such order and entering it, twelve pence, and no more.

SECT. XXXVI.

That the time of redemption of lands mortgaged before,

or at the passing of this law (where no suit is depending for the same) shall not exceed two years from the passing of this act; and the time of redemption upon any mortgage after to be made, shall not exceed one year from the entry of the mortgagee, after the condition broken; and from the time of entry within the year, and until redemption, the mortgagee shall receive double damages, if it be redeemed, unless where an infant is the heir of a mortgager, and to redeem; who shall have two years and not above, from the time of the entry of the mortgagee, after the condition broken, paying single damages; and that in all cases where the mortgagee dies, leaving an heir within age, and the mortgage redeemable, such heir, upon satisfaction of costs and damages, may join with his guardian to make reconveyance of the land mortgaged, and the same shall be good against such infant, and all claiming under him.

SECT. XXXVII.

That from the time of hearing, in suits now depending in courts of equity upon mortgages, there shall not be in any case above six months allowed for time of redemption, from the hearing of the cause, and there shall be no stop of any legal proceedings upon any mortgage, unless equity be confessed in the defendant's answer; or adjudged by the court upon the hearing of the cause.

SECT. XXXVIII.

That a mortgagee entering, and a mortgager redeeming lands mortgaged, the mortgagee shall not be responsible for more than the profits he hath clearly made of the lands, while he had the same in mortgage, deducting his necessary charges, which shall be determined by the oath of the mortgagee, his heirs or assigns, and no other proof shall be required or admitted.

SECT. XXXIX.

That the form of the oath shall be, "That neither the mortgagee, nor any other deriving title under him to his use, hath made other or more profits of the lands than are given in upon such oath, as far as he knoweth, believeth, or can possibly discover, and that there hath not been any fraud, or wilful neglect, so far as he knoweth or believeth, in the management thereof, whereby the best profit was not made to his use of the lands or tenements mortgaged."

SECT. XL.

That in case where a court of equity relieveth against a penalty or forfeiture at common law, the party relieved shall pay the adverse party double damages, unless in case of infancy, or where it shall appear by proof that the default was not by or through his carelessness or negligence; and the surplusage of mortgage-money, upon an estate mortgaged in fee-simple forfeited, and redeemed, shall go to the heir after the mortgagees debts paid, and his will performed, (if he made any;) if not, then the surplusage of the money, after payment of debts, shall go to the younger child or children of the mortgager unprovided for.

And be it lastly enacted, That a table of fees shall be hung up in the court of Chancery for causes in equity: And no serjeant or counsellor at law, officer, minister, or clerk of the said court, shall take any other fee or sum of money, for or in respect of any cause there depending, or copy of any record, or other thing there filed and registered, or put to the seal, upon pain to be punished as an extortioner, and disabled to bear any office of trust or profit in the commonwealth, unless the same shall be allowed by parliament.

Which Table of Fees shall be as followeth:

	£.	s.	d.
To serjeants and barristers at law, upon a motion, reference, giving advice, or signing bills or pleadings	0	10	0
For a hearing, or arguing a plea or demur	1	0	0
To the masters of the Chancery, for examining every skin of an exemplification of a record ..	0	2	0
For taking the acknowledgment of a deed or recognizance to be inrolled	0	0	6
To the chief clerk for writing the summons, and filing upon the return, besides the seal.....	0	1	0
The like fee for a summons to testify.			
For the seal of that and every other process, to the use of the commonwealth	0	0	6
For administering any oath	0	0	4
For process of attachment by body, lands or goods, or any of them, and filing upon return, besides the seal	0	1	0
To the attorney for the plaintiff, for filing the bill the first term	0	3	4
The like to the defendant's attorney for putting in the answer			
To the attorney of either party in the term, when issue is joined	0	3	4
To the attorney of either party at the hearing ..	0	3	4
And three shillings and fourpence more for preparing a breviat and instructing council.			
To the clerk that ingrosseth a commission to examine witnesses	0	2	0
To the examiner for examination of a witness, or upon contempt	0	2	6
To the clerk for writing and ingrossing depositions upon a commission, for every twelve lines, containing ten words in a line	0	0	3

To all the officers of the court respectively, where £. s. d.
 they are required to subscribe their names to
 any thing in court ready written, by way of cer-
 tificate, four-pence (if it exceed not twelve
 lines, with ten words in a line;) if it exceed
 twelve lines, and under twenty-four, eight-
 pence; if above twenty-four lines, twelve-pence.
 For the filing an affidavit, one penny; and for
 copies for every twelve lines, with ten words in
 a line, two-pence.

To the register for drawing and entering every
 order, not exceeding twelve lines, with ten
 words in a line, twelve-pence; and for every
 twelve lines above the first, six-pence; and for
 copies of orders, for every twelve lines, two-
 pence.

For drawing decrees and dismissions, to the attor-
 ney, for every twelve lines, with ten words in a
 line, three-pence; for inrollment, two-pence;
 for an exemplification, three-pence, for every
 twelve lines, with ten words in a line.

For a search, and reading any order or record in
 Chancery 0 1 0

To the cryer and door-keeper, to each of them,
 upon the final hearing of every cause, from the
 party that hath the decree, or for whom dismis-
 sion is pronounced, twelve-pence.

For the copy of any record in chancery, or other
 thing there filed, not before particularly ex-
 pressed, two-pence for every twelve lines, with
 ten words in a line, the party taking what part
 he pleaseth.

For writing any thing to the seal, not before men-
 tioned, for every twelve lines, with ten words in
 a line, three-pence; and to the commonwealth

for the whole great seal, the same fees that have £. s. d.
 been accustomed.
 For every answer in writing a petition 0 2 6

No. 2.—Page 170.

Report of Discussion on the Commonwealth Chancery ordinance, with the Commissioners' Objections.

From Whitelocke's Memorials, ed. 1682, p. 602.

Monday, April 23, 1655.

At the Council at *Whitehall*,

Ordered by his Highness the Lord Protector and the council, *that the lords commissioners of the great seal do proceed according to the ordinance of his highness and the council, intituled an ordinance for the better regulating, and limiting the jurisdiction of the high court of chancery.*

Henry Scobel, Clerk of the Council.

The Chairman told them, *that this ordinance was made upon good deliberation, and advice, and his highness was persuaded that it would much conduce to publick good to have it duly executed, which this order did require, which he delivered to Whitelocke, and said his highness did not doubt of their ready compliance therein.*

Whitelocke spake, as antient, and told the committee, that they had not the honour to be advised with upon the making of this ordinance, and that they were under an oath, and as far as they could they should readily comply with the pleasure of his highness and the council, and desired some time to peruse and consider the ordinance. Some debate in general there was about it, and the master of the rolls spake most resolutely against it. The committee would not enter into a

debate about it, but greatly admonished the lords commissioners to be careful not to oppose his highness intentions for the common good, and so they dismissed them.

After this the commissioners of the seal, and the master of the rolls had several meetings, and consultations about the execution of this new ordinance. The commissioner *L Isl* was wholly for the execution of it, *Sir Thomas Waldbrington*, the master of the rolls, and *Whitelocke*, were not satisfied for the execution of it, and declared their reasons against it, and observations of inconveniencies in it, which are as followeth.

The commissioners and master of the rolles are, by this act of regulation, made instrumental to deprive several persons of their freehold without offence or legal trial, which reflecting upon the great charter, and so many acts of Parliament, they humbly desire they may have the opinion of all the judges of England in point of law therein.

The fourth rule of the ordinance is, that the first process in *chancery* be a *subpoena*, which shall be open, and that as many defendants as the plaintiff doth desire, be inserted in to the same, paying no more but one shilling and sixpence for every *subpoena* thus to be distributed, six-pence for the seal, and twelve pence to the office.

Upon serving the subpoena open, the abuse, now too frequently used, will be much increased by forgery of names, persons and dates.

5.—That no *subpoena* be sued out until a bill be filed, and a certificate thereof be brought unto the *subpoena* office, under the hand of the chief clerk, or his deputy, for which certificate the chief clerk shall receive no fee.

The exhibiting a bill before a subpoena will draw an unnecessary expence and trouble in many suits, which would end upon the bare service of the *subpoena*, as is found by dayly experience: and is mischievous to the

people in many particulars, ready to be expressed, and only profitable to lawyers and attornies.

6.—That in default of appearance, upon oath made of due service, or in default of answer within due time (security being put in as is provided) an attachment with proclamation shall issue to the sheriff who shall cause the same to be proclaimed at the door of the defendants dwelling house, lodging or last abode, between ten and two by the sheriffs bayliffs, or special bayliffs; and the bayliffs shall have power for the apprehension of the party (if need shall be) to break open any house or door where the party is, in the day time provided that if the warrant be to special bayliffs they shall not break up any house or door but in presence of a constable; who upon the shewing of such warrant is required to be assisting unto the bayliffs, and if the defendant cannot be apprehended, nor shall appear by the return of the writ, the plaintiff may return the attachment as often as there shall be cause, which attachment shall be in lieu of a commission of rebellion, and serjeant at arms.

This seems to advance the jurisdiction of the chancery upon a mean process, beyond an exemption at law, to break open, not only the parties, but any other persons house, without notice, or request made to be admitted; which may be used to the robbing of houses, and taking away evidences, and other great abuses; it being far different from the awarding the serjeant at arms, who is a known, and responsible officer, and acts only by special order in open court, upon satisfaction of the height of the contempt; and his warrant is under the hands and seals of the commissioners, and he is also answerable to them for his miscarriage, if any be; and the other process is issued by clerks of course; which reflects upon the liberty, and safety of the people of this nation, wherein every ordinary clerk hath power to do more,

than all the judges of England; and how safe it is for judges to award such process is left to consideration.

7.—The defendant shall not be compelled to answer, until the plaintiff, with one surety at least, hath acknowledged a recognizance before a master of the *chancery* in ordinary, or extraordinary, (the sum not to be under twenty marks) conditioned to pay such costs to the defendant in that suit, as the court of *chancery* shall award, if they see cause to award any, for which recognizance he shall be paid twelve pence only, and no more; and such master of the *chancery* shall for as much certifie, every such recognizance, into the office of the petty bag, in *chancery*, to be there filed, and the officer there shall give a certificate thereof to the plaintiff or his attorney, upon request; and for the filing such recognizances, making certificate, and keeping an alphabet thereof, he shall receive twelve pence and no more, but where the plaintiff shall be admitted in *forma pauperis*, there no security is to be required.

By this the defendant is not bound to answer without the plaintiff gives security by recognizance, which will be an incumbrance upon his land, so long as that suit endures; which will hinder commerce, and disable infants, and persons non compos mentis to sue, and is of great delay, and five times the former expence, before the suit can have an answer, and the discharging and suing recognizances will increase motions, suits, and expences, and if the suits never proceed, it will be difficult to have it discharged, and cannot be but by orders, albeit the parties consent, and the rule itself is uncertain, not expressing to whom the recognizance shall be given; and doth no more than what may be done upon an order for costs, without so much expence, which is only of advantage to lawyers, officers, and clerks.

8.—That where a defendant might answer by commission in the country, he shall not now be forced to take a commission but may answer upon oath before a master of the *chancery* in the country, in like manner and by such time as if a commission had issued, and that the lords commissioners for the great seal do take care for that purpose there be in every county a convenient number of such of the justices of the peace resident in that county, as they shall judge to be of the greatest ability and integrity, appointed to be masters of the *chancery* extraordinary, and that such master or any master in ordinary, after the answer so sworn before him, shall sign the same and give it into court himself, or being sealed up, deliver it to some person, to deliver the same into court, and to make oath that he did receive the same from the hand of such masters of the *chancery* and that since the receiving thereof the same hath not been opened, or altered.

It is very dangerous to rely upon answers as this rule directs; for the defendant may go into any country, and never call any person thereunto, that knows him to be the same person.

9.—That upon delivering in the answer, the attorney for the defendant do take care that he be provided with names of persons for commissioners to be given by him upon a rule given to rejoin.

It is not possible until the defendant doth know into what county the plaintiff will take his commission.

10.—When an answer is put in, the plaintiff shall reply within eight days if the answer were in term time, otherwise within four days after the beginning of the next term, unless the plaintiff shall within eight days after the answer come and put in exceptions thereunto, or promise the cause to be set down for hearing on bill, and another to be heard the next term, otherwise the cause to be dismissed without motion, which costs to be taxed by the chief clerk.

This cannot be observed without great mischief that may happen, in case where all the defendants have not answered, which may be the loss of a cause, where the plaintiff hath occasion to put in a special replication, it cannot be known to his counsel, or attorney, but by the plaintiff's information; and experience hath found great inconvenience to confine the plaintiffs to such short time; and it is the cause of many motions to enlarge it, and the execution of this rule is of no advantage to the defendant, as is conceived, unless it be to surprise the plaintiff from making the truth of his case appear.

12.—That in case the plaintiff think fit to except unto the answer for insufficiency, the plaintiff shall deliver the exception, in writing, to the defendant's attorney within eight days after the answer filed, and shall enter the cause with the register; and in the same order as they are entered, the same shall be heard by the master of the rolls, who shall appoint one or more days in the week for that purpose, and at every sitting shall appoint his next day of sitting, and how many of the said causes shall be then heard upon exceptions, in the same order as they are entered, which days the parties shall attend at their peril. And the master of the rolls upon hearing thereof shall give such costs as be fitting.

This hinders the defendant's liberty to amend his answer without further delay or expence.

13.—That if a defendant doth appear and answer insufficiently, and it be so ruled or shall plead demur, and the same be over ruled, than if upon a rule given, he shall not answer within eight days, the plaintiff may proceed in such sort as is before directed, in case the defendant had not appeared.

This, together with the sixth article, imposeth upon any person that lives remote, without any notice or default

in him, to have his house broke open, or any other house wherein he is, and to be taken in contempt.

14.—That after an answer, if it appear at any time to the court, that no part of the matter of the plaintiffs bill is then proper for relief in that court, the court shall dismiss the bill with full costs upon a bill to be allowed by the chief clerk, but if some particular part of the bill be thought fit by the court to be proceeded in, the court then shall direct the examination, and proceeding upon that particular point, and the defendant not to be enforced to proceed to examine upon any other matters.

This will create a multitude of actions, and expence, and in implicated causes of fraud, and trusts, will be dangerous to break or cut them off, and to give judgment upon them before a hearing; and is of no advantage to either side, but what the court may thereby provide for at the hearing, if any thing be unnecessarily examined.

15.—The plaintiff the next day after the supplication filed, or the same day if he will, shall cause a rule to be entred for the defendant to rejoyne and joyn in commission, which if the defendant shall not do within eight days, the plaintiff may take a commission *ex parte*, and the defendant shall have no new commission in that cause.

This will be a means to surprise many persons in their just defence, without any provision against sickness, or any other accidents, and if this be enforced as a law, all special rejoinders, for which there may be just cause, are taken away; and it will destroy many a just cause, leave the party remediless, and encourage false dealing.

16.—That no witness shall be examined in court but by one of the examiners themselves, but in case of sickness: and that one of the examiners shall examine the witnesses

of the plaintiffs party, and the other the witnesses of the defendants party, if any be produced to be examined in court, and that no clerk of that office shall be a solicitor upon pain of losing his place.

No provision is made but that an examiner being a party, must examine his own witness, or his adversaries.

17.—That all commissions for examination of witnesses shall be open.

The same will be in this, as in the case of subpoenas, patents, and many more.

19.—That the commissioners for examination of witnesses shall take an oath before execution of any commission, to execute the same faithfully and impartially; which each commissioner is empowered to administer to other. And the clerk or clerks attending such commissioners shall take an oath, which is to be administered by the commissioners, to write down the depositions of witnesses truly, and indifferently, without partiality; and a clause shall be in the commission for that purpose.

The commission is a writ in the register, and it is not mentioned or provided, what the form of the oath, or clause to be inserted shall be, nor by whom inserted; and if this be extended beyond a rule, and taken for a law; any plaintiff who shall lose his commission, shall lose his cause, and so of any other accident, though never so unavoidable.

21.—That there shall be no more than two commissions at the most for examination of witnesses in any one cause to be executed in *England* or *Wales*, unless where one shall be suppressed; and in case either party have any witnesses in *Scotland*, or beyond the seas to examine, setting down the names of such witnesses, and delivering them to the attorney of the other side, he may take out a commission within the time before limited, wherein the adverse party may join, if

he will, within four days after notice, or otherwise the commission shall issue *ex parte*, provided that the parties or either of them (and court see cause) may have several commissions unto several counties of the same date.

This is mischievous for the reasons before, and if this be extended beyond a rule, not to be dispensed withall, as reason may require upon accidents, many plaintiffs will loose their causes, especially merchants, who cannot by that time know where their witnesses are.

22.—That after the execution of one commission, no second commission shall be taken out, but by order of the court, and upon affidavit, that some material witnesses, whose names shall be therein expressed, have been discovered since the execution of the former commission, or that some of the witnesses intended to be examined at that commission, and which are material, could not be found, or by reason of sickness, or like just cause, could not attend that commission, in such case only those witnesses which shall be named, shall be examined by such second commission, and the same shall issue and be executed at the charge of the party praying the same, unless the other side shall also desire to examine any witnesses by any such second commission, and then he shall likewise set down their names.

This is like as before.

23.—That after the return of a commission executed, or witnesses examined in court, there shall be but one rule for publication, within which time, if the other side do not shew unto the court good cause to the contrary, publication shall pass, &c.

This rule doth not express after what commission, nor what witnesses, whether all, on either side, or not; and will surprize the parties before they can move, or be heard by the court, why publication should not pass, and increase motions to the advantage of lawyers and solicitors.

24.—That from and after the twenty second of *October*, 1654, no order or direction concerning any cause depending in *chancery* to be made or given, but upon motion in open court, that then both parties concerned, or their counsel, may be heard.

The rule of the court already being, that no order shall be made upon petition, upon the merits or body of the cause, or to controul an order in open court; if that be further extended, as a law, then many of the suitors of the court may loose their causes, and be ruined, and there will be a failer of justice, and great mischief ensue, as by dayly experience is found.

27.—That no injunction be granted but upon motion in open court, satisfying the court in such matter which may induce the court in justice to grant the injunction; but the defendants taking a commission, or sitting an attachment only, shall be no sufficient ground for an injunction.

This is so general that it extends to all injunctions, and so in cases of waste, timber may be felled, houses pulled down, meadows and antient pastures ploughed up, to the irreparable loss of the plaintiffs, and the commonwealth, before an order can be procured to stay, in case the defendants will not answer; and if no injunction be granted upon an attachment, or delay of answer; a defendant although not worth a penny, may stand in contempt, get an execution on the plaintiff's estate, and make it away, and no reparation can be had.

29.—That no injunction granted after a plea pleaded at law or rules given, shall stop a tryal at law, or any pleading, or proceeding preparatory to a tryal.

It seems much against equity, that if the defendant shall by answer confess the whole debt to be paid, to suffer him to go to tryal at law, which will be but a vain expence to the parties, and only profitable to lawyers.

30.—That from and after the twenty second of *October*, 1654, no injunction be granted to stay the mortgagee from his suit at law, till the final hearing of the cause; but an injunction may be granted to prevent the mortgagees pulling down houses, cutting trees, or making other waste or spoil upon the mortgaged lands.

This is very mischievous where there is equity for an injunction in this case, as well as upon bonds, or other securities; the mischief being greater to the mortgagor (who shall be turned out of possession) than to the obligor in a bond, and the mortgagee is also in better condition than the obligee, by reason of his security by land, and yet the court is not barred to stay proceedings upon bonds, and all other securities, but are restrained in cases of mortgages.

31.—That all differences touching irregularities in proceedings, or upon the rates or course of the court shall be determined by the said chief clerks or any two of them, on whom the attorneys on both sides are to attend: and in case either side shall not rest satisfied with the judgment therein, they may appeal to the master of the rolles, who upon hearing the attorneys on both sides, (and the chief clerk who made the certificate) if he see cause, shall settle the same, and give costs where he finds the fault.

This deprives the commissioners of all power upon the rules, and course of the court; and these very rules upon which they are to judge, and be answerable, as they are judges of that court; and gives power to the chief clerk to be judge even of these rules.

32.—All other references shall be determined by the masters of the *Chancery* in ordinary, which shall be only six in number, to be now, and from time to time, appointed by the protector for the time being; of which six, there shall sit daily at some certain public place three, so long as any

The like objections were made to all the rest of the articles, and particulars of the new ordinance touching the *Chancery*; which though they would not prevail to stay the exemption of it, as to the Lords Commissioners who seemed to doubt the power that made it (which the makers would not endure) yet they were the means that it was not exacted from their successors; but they were connived at in the not execution of it, wherein they could not have satisfied themselves, having taken an oath which they scrupled would be broken, either in the admittance of this ordinance for a law; or if admitted, in neglecting the performance of any part thereof.



No. 3.—Page 186.

Sir M. Hale on the Amendment of the Law, and Hargrave's Preface.

By long use and custom, men, especially that are aged and have been long educated in the profession and practice of the law, contract a kind of superstitious veneration of it beyond what is just and reasonable.

* * * * *

They tenaciously and rigorously maintain these very forms and proceedings and practices, which, tho' possibly at first they were seasonable and usefull, yet by the very change of matters they become not only useless and impertinent, but burthensome and inconvenient and prejudicial to the common justice and the common good of mankind: not considering the forms and prescripts of laws were not introduced for their own sakes, but for the use of public justice; and therefore, when they become insipid, useless, impertinent, and

possibly derogatory to the end, they may and must be removed.

* * * *

An over-jealous fear, that it may be possible, that some unthought-of inconvenience may emerge, which may introduce some unexpected mischief to the community, and with it a disparagement to the judgment of those that are undertakers in it. And this lion in the way choaks all industrious application to this most necessary business.

A timorousness to displease and disoblige great officers and ministers of justice, especially such as have paid dear for places of this nature (one of the greatest banes to justice and necessary reformation;) for it must needs follow upon a due reformation of what is amiss, that some offices must be laid aside as needless, others pared from their redundancy.

* * * *

The second consideration is this, as all sublunary things are subject to corruption and putrefaction, to diseases and rust, so even laws themselves, by long tract of time gather certain diseases and excrescences; certain abuses and corruptions grow into the law, as close as the ivy unto the tree, or the rust to the iron, and in a little tract of time gain the reputation of being part of the law. So that a great and considerable part of that reformation, that is pleaded for, is not so much of the law, as of abuses and corruptions, and wens and excrescences, and delays and formalities and exactions, that do adhere to the law, and will in time strangle and stifle it with its close adherence to it. And when these dear and profitable exuberances, and ulcers, are looked after, presently those, that are concerned in the profit thereof, or do not duly distinguish between the law and its abuses and diseases, cry out upon destroying the law, and altering of the law, when in truth it is the rescuing of the law from those encroachments or abuses that are made upon it or brought into it.

And we must remember, that laws were not made for their own sakes, but for the sake of those who were to be guided by them; and though it is true they are and ought to be sacred, yet, if they be or are become useless for their end, they must either be amended if it may be, or new Laws be substituted, and the old repealed, so it be done regularly, deliberately, and so far forth only as the exigence or convenience justly demands it. And in this respect the saying is true, *salus populi suprema lex esto*. Now Laws become or are useless to their end upon two accounts.—1. When in their very constitution and fabrick they are rotten and faulty, and unjust, and impossible to be born without remarkable and common inconvenience. I shall not apply this part to the thing in question. But, 2. when a law, tho' never so good in its first institution, yet by reason of some accidental emergences that do most usually happen in tract of time, either becomes obsolete and out of use, or weak and unprofitable to its end, or inconsistent with some new superinduction that time and variety of occasions have introduced. And as this is most clear in all laws, so in our English laws we shall find, what was in use, and possibly very effectual in its time, is now deserted and antiquated, and utterly unapplicable to the present state of administration in England.

But yet further, by length of time and continuance laws are so multiplied and grown to that excessive variety, that there is a necessity of reduction of them, or otherwise it is not manageable; as we have before observed touching the Roman laws, which in a tract of 1300 years grew to 2000 great volumes. And the reason is, because this age for the purpose received from the last a body of laws, and they add more and transmit the whole to the next age, and they add to what they had received and transmit the whole stock to the next age. Thus as the rolling of a snow-ball, it increaseth in bulk in every age, till it become utterly unmanageable. And hence it is, that even in the laws of England we

have so many varieties of forms of conveyances, feoffments fines, release, confirmation, grant, attornment, common recovery, deeds enrolled, &c., because the use coming in at several times, every age did retain somewhat of what was past, and added somewhat of its own, and so carried over the whole product to the quotient. And this produceth mistakes. A man perchance useth one sort of conveyance where he should have used another. It breeds uncertainty and contradiction of opinion, and that begets suits and expence. It must necessarily cause ignorance in the professors and profession itself; because the volumes of the law are not easily to be mastered.

* * * * *

In the preparing and passing of these laws, I would wish these methods were observed, viz.—1. That it would please the king, with the advice of both houses of parliament, to require the judges and other sages of the law to prepare bills, that may be fit for the reformation of the law against the next session. For as I would not have any man intermeddle in so great business without a most authentic injunction by the king and his supreme council, lest he should come under the prejudice of a busy body or an undertaker; so on the other side, I think, no persons are so fit to be employed in the first digestion of such a business, but such as know what best belongs unto it, and how far may be gone with safety and convenience: and as it were an unworthy thing, especially in a judge, to prefer his own interest or profit or the interest of the courts or officers of courts, above the publick benefit, so it were an unworthy thing to suspect such a business in those, who are interested with the lives, liberties and estates of the people in their judicial employments:—2. Such bills so prepared should be presented to the house of commons in the first place; because they represent in a more especial manner the common interest of the people.—3. When such bills are twice read

and committed, and have been once or twice particularly debated at the committee, it may be very fit to call the judges to a solemn debate at the committee of the house of commons, where they may give the reasons, why they go so far, and why no further; and that their opinion be asked touching any alterations or amendments offered, and the reasons in relation thereunto; for it many times falls out, that a very good and profitable bill is suddenly spoiled with a word inserted or a word expunged, which would be prevented if the contrivers of the bill were first heard to it; and thus many a good law is lost, or not retrieved again without many messages and conferences between the houses.

4. When the bill comes to the lords and is twice read and committed, it were fit, that all the judges attend the committee for the reasons above given.—Bills thus prepared and hammered would have fewer flaws, and necessity of supplemental or explanatory laws, than hath of late times happened.

Mr. Hargrave,* in his Preface to Lord Hale's Considerations touching the Amendment of the Laws, commends Bacon and Hale for their disinterested exertions in the reform of the law.—“Pity it is that, from their times down to the present moment, the body of our law has been suffered continually and rapidly to increase, with scarce any other aids to contract its bulk or preserve its consistency, than those of occasional private contribution. What would a Bacon or a Hale have said, what would they have advised, had they lived to have seen our Statute Law not only swelled already into more than ten fold size beyond that which so alarmed their apprehensions, but still yearly extending its dimensions by such a ratio, as must soon terminate in a bulk immeasurable by the most industrious and accomplished of

* Mr. Hargrave's Preface to 2nd article in *Law Tracts, and Jurisconsult Exercitations*, London, 1811, 4to. vol. ii. p. 392.

legal understandings? Would two such zealous friends to English jurisprudence, far exceeding even the Tribonian and Theophilus of the school of Roman law, have been mere spectators of the most dangerous of all judicial diseases? Would they not have generously offered their aid, towards forming a plan, for as gradually curing this disease of infinite accumulation, as it has been gradually and almost imperceptibly contracted? Would they not, were they now living, have earnestly supplicated the sovereign, or perhaps the parliament, to save the country from that ruin, which must ensue the moment the science of law and the administration of justice shall cease to be practicable?"

No. 4.—Page 334.

Letter from Lord Hardwicke to Lord Kames, on the Principles of Equity, extracted from Lord Woodhouselee's Memoirs of Lord Kames, vol. i. p. 237.

The Earl of Hardwicke to Lord Kames.

Grosvenor Square, June 30, 1750.

My Lord,

It has happened to me again, as it did in the former instance of our correspondence, that I have not been able to acknowledge as I ought your Lordship's obliging communication of the *Introduction to the Treatise upon Equity*, till the session was over. I ought indeed to be one of the men of leisure, but it generally falls out, whilst the Parliament is sitting, that business is cut out for me. As your performance is the fruit of deep consideration, the respect of consideration and attention was due to it, and the honor you

do me by calling for my thoughts, gives you a right to demand it. I have read over your papers more than once with care, and not without much approbation of the ingenuity and industry of your researches and reflections. The field is wide, and to range the whole is beyond my strength, but I will beat a piece of ground, here and there, to try if I can start any thing that may be worth your Lordship's pursuing.

Your Lordship has treated very properly upon the rise of the jurisdiction of equity in England; a topic of much controversy, and hitherto unsettled. The general idea which you have flung out concerning it, appears to me to be very judicious, and that, in the original formation and division of courts, causes of an extraordinary nature, to be determined, not by stated rules of law, but by an arbitrary, though sound discretion, were reserved to the Sovereign and his Council: It was natural that it should be so; for as all power of judicature was derived from the Crown, so much as *that* did not grant out or commit to others, must remain there; with this difference, that some have been of opinion, that it was reserved to the King, in his great Council, that is, the Parliament.

It is now many years ago that I read over a MS. treatise of one of our most able Lawyers and antiquarians, my Lord C. J. Hale, concerning *Jurisdiction*, from which I transcribe some passages on this subject in his own word. The great character of the author may give your Lordship a curiosity to see them.

In one part he has these words:—"There were many petitions referred to the Council (meaning either the "*Privatum Concilium* or *Legale Concilium Regis*,) from the Parliament, sometimes by the answers to particular petitions, and sometimes whole bundles of petitions in Parliament, which, by reason of a dissolution, could not be there determined, were referred, in the close of the Parliament,

“sometimes to the Council in general, and sometimes to the
 “Chancellor; and this I take to be the true original of the
 “Chancery’s jurisdiction in matters of equity, and gave rise
 “to those multitudes of equitable causes to be there arbitra-
 “rily determined.” A little lower he adds:—“Touching
 “the equitable jurisdiction (in Chancery) though in ancient
 “time no such thing was known, yet it hath now so long
 “obtained, and is so fitted to the disposal of lands and
 “goods, that it must not be shaken, though in many things
 “fit to be bounded and reformed. Two things might possi-
 “bly give it original or at least much contribute to its
 “enlargement. *1mo.* The usual committing of particular
 “petitions in Parliament, not there determined, unto the
 “determination of the Chancellor, which was as frequent
 “as to the Council; and such a foundation being laid for a
 “jurisdiction, it was not difficult for it to acquire more.—
 “*2do,* By the invention of uses, (*i. e.* trusts,) which were
 “frequent and necessary, especially in the times of dissen-
 “sion, touching the Crown. In these proceedings the
 “Chancellor took himself to be the only dispenser of the
 “King’s conscience, and possibly the Council was not called
 “either as assistants or co-judges.”

There seems to have been a natural reason how this
 jurisdiction, arising originally from such references, came
 to be devolved into the hands of the Lord Chancellor, rather
 than of any other branch or member of the Council. The
 Chancery is with us the grand *Officina Justitiæ*, out of which
 all original writs, (*briefes* as they are called in Scotland)
 issue under the Great Seal, returnable in the courts of com-
 mon law to found proceedings in actions, competent to the
 common law jurisdiction. The Chancellor therefore was
 the most proper judge whether upon any petition so referred,
 such a writ could not be framed and issued by him, as might
 furnish an adequate relief to the party; and if he found the
 common law remedies deficient he might proceed according

to the extraordinary power committed to him by the reference, *Ne curia Regis deficeret in justitiâ exhibendâ*. I don't know whether a certain law book, published here not long ago, has reached Scotland, I mean the *Reports* of Sir John Strange, late Master of the Rolls. If it has, your Lordship will find in the first volume, an argument of mine, in a remarkable cause of Sir Robert Walpole's, which passes under the name of *The King against Hare and Man*. It was when I was a very young Advocate, before I was Solicitor-General, but it is correctly reported; for I remember Sir John Strange borrowed my papers to transcribe, so that the faults in it are all my own. In arguing that cause, which turned upon a critical exception to the return of a writ of *scire facias* in Chancery, I found, or at least fancied it to be necessary to shew; that all the various powers of that court were derived from, or had relation to the Great Seal; and as I had not then seen my Lord Hale's manuscript, endeavoured to prove, that the equitable jurisdiction exercised by the Chancellor, took its rise from his being the proper officer to whom all applications were made for writs or brieves, to ground actions at common law; and from many cases being brought before him, in which that law would not afford a remedy, and thereby being induced, through necessity or compassion to extend a discretionary one.

If this account of the original of the jurisdiction in equity in England be historically true, it will at least hint one answer to the question. How the Forum of Common Law and the Forum of Equity came to be separated with us? It was stopped at the source, and in the first instance; for if the case appeared to the Chancellor to be merely of equity, he issued no original writ, without which the court of Common Law could not proceed in the cause, but retained the cognizance of it to himself.

Whether the jurisdiction of Common Law and Equity, ought to be committed to the same, or to different courts, is

a question of another nature, and is very properly said by you to be no less intricate than important. It is a question of policy and legislation, depending upon general reasons of civil prudence and government. You have treated it with great modesty; and for my own part I am fearful of being influenced by some prejudice or bias contracted from long habit, and the usages of my own country. But I must confess I have always been of the opinion delivered by the great and sagacious author you have cited*—That to keep the two jurisdictions separate is the most eligible. I agree that in considering this point upon different principles there is room for different determinations. All the arguments drawn from the ease and convenience of the Suitors, the preventing vexation and delay, and saving of expence seem to conclude for uniting them in the same court. On the other hand, the arguments drawn from the necessity or utility of preserving the rules of law entire, and not leaving it in the power of Judges to new mould and vary those rules at discretion, by insensibly blending law and equity together, hold for keeping them divided. These reasons regard the constitution of the Government, and have always appeared to me to outweigh the others, inasmuch as what is of general and public consequence, ought to be preferred to private or particular convenience. My Lord Bacon says, *Si fiat commistio jurisdictionum, arbitrium tandem legem trahet*, and I think I have in some instances seen that effect produced. No wonder then, that a people jealous of their liberties, and fond of their laws, and therefore desirous to bind the hands of their Judges by stated rules, should lean against so dangerous an institution. Besides the tendency it would have to make the Judges of the common law law-makers in matters of property, I think, in time, it would have an effect of the like kind upon cases of crime, which affect life and liberty. In most countries the genius of the civil and criminal law is the

* Lord Bacon.—De Aug. Scient. lib. viii. c. 3, aphor. 45.

same: and the rules, both of the one and of the other are analogous. Arguments are often drawn from the rules in civil cases to influence the decision of criminal ones, where doubtful questions arise. Suppose then, for a moment, that in such a mixed jurisdiction, the Judges have let in certain principles of equity to become rules of law, though not originally founded in the common or statute law; suppose also, that in tract of time, the commencement of this change is forget and lost; the points thus established will pass for original common law, and be argued from to govern decisions in criminal matters; in which the most obvious points that occur to the mind may be questions of evidence. If this had been allowed in England, I fear the common law would have sunk long ago, and every thing been resolved into the *arbitrium boni viri*.

The mention of this most liberal description of equitable jurisdiction, the *arbitrium boni viri* puts me in mind to say a few words upon another question very properly stated by you, *Whether a Court of Equity ought to be governed by any general Rules?*

It is impossible to answer this question in a satisfactory manner without running into several distinctions.

Some general rules there ought to be, for otherwise the great inconvenience of *Jus regum et incertum* will follow; and yet the Prætor must not be so absolutely and invariably bound by them, as the Judges are by the rules of the common law; for if he were so bound, the consequence would follow which you very judiciously state, that he must sometimes pronounce decrees, which would be materially unjust since no rule can be equally just in the application to a whole class of cases, that are far from being the same in every circumstance.

This might lay a foundation for an equitable relief even against decrees in equity, and create a kind of superfection of courts of equity.

This consideration brings to my mind a cause which happened in the Court of Chancery very early in my first attendance of Westminster Hall as a student, which occasioned some mirth as well as attention. The decision is not reported in any book, and my memory does not serve me to state all the circumstances of it. In the law of England there is a process called an *Audita Querela*, which is a suit at common law, whereby a defendant may be relieved after and against a judgment or execution, upon particular equitable circumstances but limited and bound by certain rules. A defendant in a judgment had, by some fraudulent contrivance, artfully brought his case within some of those rules, and sued his *Audita Querela*; against which the plaintiff in the judgment was advised he could make no defence at law, and brought his bill in Chancery to be relieved against the *Audita Querela*. It happened that both my Lord Cowper, then Lord Chancellor, and the Master of the Rolls were called away upon public business, and Mr. Justice Eyre, a strict common lawyer, who had never practised at all in a Court of Equity, sat in Chancery that day, by virtue of the standing commission to hear causes in the absence of the Chancellor. The Counsel for the defendant in Chancery, who was plaintiff in the *Audita Querela* thought themselves sure of victory, when so extraordinary a cause as a bill in Chancery, to be relieved against a common law suit of Equity, came to be heard before a common law judge; and the Counsel for the plaintiff were proportionably in despair. But the Judge found that the plaintiff in Chancery had the merits on his side; and yet the court of common law must, by reason of their general rules established, have given judgment against him, and therefore he decreed an injunction to stay the proceedings in the *Audita Querela*. This decree was upon a rehearing affirmed by my Lord Cowper, not without some observation upon the singularity of the case.

I am apprehensive that if general rules were to be fixed invariably to govern a court of Equity, many cases would happen similar to this old story of the *Audita Querela*.

In our courts of Equity general rules are established, as far as it has been judged the nature of things would admit, especially since the time of my Lord Keeper Coventry, who was very able and contributed a great deal towards modelling the Court of Chancery. In the construction of trusts, which are one great head of Equity, the rules are pretty well ascertained, so they are in cases of redemption of mortgages, which makes another great branch of that business. But as to relief against frauds, no invariable rules can be established. Fraud is infinite, and were a court of Equity once to lay down rules, how far they would go, and no farther, in extending their relief against it, or to define strictly the species or evidence of it, the jurisdiction would be cramped, and perpetually eluded by new schemes, which the fertility of man's invention would contrive.

To this fertility of invention, and luxuriant growth of fraud, is owing the increase of causes in courts of Equity, which has been observed in modern times; and not to that encroachment upon the common law, which my Lord Bacon, in his 43rd aphorism, calls an overflowing of the banks in prætorian courts. *Maximè omnium interest certitudinis legum, ne curiæ prætoriæ intumescant et exundent in tantum ut prætextu rigoris legum mitigandi, etiam robur et nervos his incident, aut laxent, omnia trahendo ad arbitrium.*

The Judges who have presided in Chancery since the Revolution, have for the most part endeavoured with much anxiety, to preserve the boundaries of the two jurisdictions of common law and equity from being confounded; and have sent forth their injunctions to stop the course of the common law, with a cautious and sparing hand. But new discoveries and inventions in commerce have given birth to new species of contracts, and these have been followed by new contri-

vances to break and elude them, for which the ancient simplicity of the common law had adapted no remedies; and from this cause, Courts of Equity, which admit of a greater latitude, have, under the head, *adjuvandi vel supplendi juris civilis*, been obliged to accommodate the wants of mankind.

Another source of the increase of business in Courts of Equity has been the multiplication and extension of trusts. New methods of settling and encumbering land-property have been suggested by the necessities, extravagance or real occasions of mankind. But what is more than this, new species of property have been introduced, particularly by the establishment of the public funds, and various transferable stocks, that required to be modified and settled to answer the exigencies of families, to which the rules and methods of conveyancing provided by the common law would not ply or bend. Here the liberality of courts of equity has been forced to step in and lend her aid.

I cannot put an end to this conversation with you, without taking notice of one point, which is introduced *obiter*, and not essential to the plan of your work; I mean what is delivered concerning universal benevolence.

Nothing can be more just than the proposition laid down by you, "That the connexions which excite benevolence, differ widely in degree, from the most remote to the most intimate; and that benevolence is excited in a just proportion to the degree of the connexion." I have not the *Essays on Morality and Natural Religion*, to which you refer, just now at hand to resort to, but it is a plain consequence from this proposition, that the degrees of duty will differ according to the nearness or remoteness of the objects: however I cannot help wishing that you would reconsider your conclusion, *That the doing good to one of our own species, merely as such, never is a duty.* Mankind is one great family derived from the same common parents. From hence arises

a natural connexion; and people are too apt to neglect the obligation of doing good in practice, to want to be taught where it ceases in doctrine and precept. I know you have too much candour to be offended with the freedom of this observation. I am, with the greatest esteem, my Lord, your Lordship's most obedient humble Servant,

HARDWICKER.

No. 5.—Page 359.

Report of the Commissioners for examining into the Duties, Salaries, and Emoluments, of the Officers, Clerks, and Ministers, of the several Courts of Justice in England, Wales, and Berwick upon Tweed—

AS TO THE COURT OF CHANCERY.

Dated April 9, 1816.

To the King's most excellent Majesty, in his High Court of Chancery.

Your Majesty, having been pleased, upon an address of the knights, citizens, and burgesses, and commissioners of shires and boroughs, in Parliament assembled, to issue a commission by letters patent, under the great seal bearing date the ninth day of February, in the fifty-fifth year of your Majesty's reign, directed to us, authorizing and appointing us or any three or more of us, to make a diligent examination of the duties, salaries and emoluments of the several officers, clerks, and ministers of justice, of and within the Court of Chancery, and other courts in the said commission particularly mentioned or referred to, and also to make a diligent examination what regulations may be fit to be established respecting the duties, salaries and emoluments,

of the said several officers, clerks and ministers of justice; and for the better discovery of the truth in the premises, to call before us, or any three or more of us, such and so many of the said officers, clerks, and ministers, and other persons, as we shall judge necessary, by whom we may be better informed of the truth in the premises; and further to inquire of the premises, and every part thereof, by all lawful ways and means whatsoever, and, where the same shall appear to be requisite, to administer an oath or oaths to any person or persons whatsoever, to be examined before us, or any three or more of us, touching or concerning the duties, salaries, emoluments, and regulations aforesaid; and further to cause all officers, clerks and ministers of justice, to produce upon oath before us, or any three or more of us, all and singular rolls, records, orders, books, papers, or other writings belonging to any of the said courts, or to any officers or ministers of justice as such officers or ministers, touching or relating to their said offices or ministration, and which shall be in the custody of them or any of them respectively; and also commanding us or any three or more of us, upon due examination of the premises to propose and reduce into writing under our hands, such regulations as we may think fit to be established respecting the duties, salaries and emoluments aforesaid; and within the space of two years after the date of the said Commission, or sooner if the same can reasonably be, to certify unto your Majesty, in your Majesty's Court of Chancery, in parchment, under our hands and seals respectively, all and every of our several proceedings by force of the said Commission, together with what we shall find touching or concerning the premises upon such examination as aforesaid, and what regulations respecting such matters we shall think fit to be established; and further directing that we or any three or more of us, shall have liberty to certify our several proceedings from time to time to your Majesty, in

your Majesty's Court of Chancery, as the same shall be respectively completed and perfected; in pursuance of the said Commission, we your Majesty's Commissioners, whose hands and seals are herunto set, proceeded to make the examination, by the said Commission directed by calling before us, so many of the said officers, clerks, and ministers of justice, and other persons as we judged necessary, and by administering an oath to them where the same appeared to us to be requisite, and by causing many of such officers, clerks, and ministers of justice to produce upon oath before us various records, books, and writings in their custody, and by all such other lawful ways and means as appeared to us best adapted to discover the truth in the premises: And we your Majesty's said Commissioners having as to the court of Chancery, completed the examination directed to be made, do pursuant to the liberty given to us, by the said Commission, to certify our proceedings from time to time unto your Majesty, in your Majesty's High Court of Chancery humbly certify unto your Majesty, what we have found upon the examination by our Commission directed to be made, touching or concerning the officers, clerks, and ministers of the said Court of Chancery, their duties, salaries and emoluments, and what regulations we think fit to propose to be established respecting such matters.

Before we advert to any particular office, we think it proper to lay before your Majesty some account of the general principles on which we have proceeded. Your Majesty is apprized that in the year one thousand seven hundred and thirty two, a Commission issued under the great seal directing inquiries to be made, in many respects similar to those in which we have been engaged, and the powers and authorities thereby granted having been continued by several subsequent Commissions, the Commissioners acting under the authority of these several Commissions made a Report in the year one thousand seven hundred and

forty respecting certain officers, clerks and ministers of the Court of Chancery, their service and fees; and in the year one thousand seven hundred and forty three, the Lord Chancellor *Hardwicke*, having taken that Report into consideration, with the advice and assistance of the right honorable *William Fortescue*, Master of the Rolls, made an Order for regulating the service and fees of such officers, clerks and ministers. This order affords a standard with which to compare the fees now actually received: in some instances it indicates all the fees that are to be taken by virtue of the office under consideration, in others only what are to be taken for the particular business specified. We have thought it our duty to ascertain, as minutely as possible, the whole of the fees and emoluments taken in every office within the scope of our inquiry, and to state every fee or emolument so actually taken, distinguishing those which are agreeable to the order and those which vary from it, and in what respect they differ; and this, whether the variation be an augmentation of the fee warranted by the order 1743, or an emolument arising upon occasions not mentioned in that order.

Accordingly, our report will be found to contain lists or tables, constructed in such a manner as to shew at one view what fees or emoluments are actually received, and upon what occasions; whether any fee is allowed by the order of 1743, upon any particular occasion; and if a fee be allowed, whether the fee or emolument now taken is conformable to the order or in what respect, and to what amount it differs. Having done this and endeavoured to bring these facts in the clearest way before your Majesty, we conceived that we had still another and more arduous duty to perform. If we had thought that no more was required of us than to state what emoluments were received, not authorized by the order of 1743, or if we could have recommended such emoluments to be disallowed in future, without other reason than that they

were unauthorized by that order, we should have avoided much responsibility to which we feel ourselves liable, and much labour which we have been obliged to undergo. But we consider ourselves bound to take a more extensive, and in our judgment a more useful view of the subject. It was obvious that a scale of payment fixed in 1743, and even at that time deemed no more than reasonable, must be a very inadequate compensation for the same services at the present day, and must, judging from the past, become still more inadequate in future. It occurred to us also that the same mischief would follow in this instance, which has followed in every other where services have been inadequately compensated, namely, either that they would remain unperformed, or that they would be executed by persons unequal to the duties, and unworthy of the trust reposed in them; a hazard, to which we conceive it could not be the intention of your Majesty to expose the public in any respect, and more especially in matters connected with the administration of justice. We were confirmed in these opinions by the express terms of your Majesty's commission which commands us to propose such regulations, respecting the subjects of our enquiry, as should appear to us fit to be established. We have therefore, acting upon these opinions and in obedience to this express command, considered what fees or emoluments ought to be allowed, and what ought to be prohibited; without deeming ourselves bound to recommend the disallowance in future of such fees or emoluments as appear to have been received without authority from the order of 1743, merely because they are not warranted by that order, we have stated what allowance it would in our opinion be just and reasonable to make upon each particular occasion, if at this time a new rule were to be established by competent authority. In pursuing this course, we conceive that we not only obey the letter and spirit of the commission under which we act, but also follow the precedent of the commis-

sioners in 1740. Their report, as to several of the offices, distinguishes reasonable fees from lawful fees, and recommends the allowance of such as according to their opinion were reasonable although not lawful; and the order of 1743 adopts the recommendation, and permits the future receipt of the emoluments which in the report are excluded from the description of lawful, and included in that of reasonable only. In deciding upon the numerous questions, as to the reasonableness of the emoluments now received, which the course pursued has brought before us, we have considered the circumstances of the office, the qualifications which its functions require, the importance of its duties, the adequacy of each fee to the duty in respect of which it is taken, and the length of time during which such fee has been received. In giving weight to length of time we have not acted upon the hypothesis, that the receipt alone of any emolument, however antient or uniform, could confer any title in opposition to the order of 1743. Whatever the law may be, our recommendations have not been founded upon that hypothesis. But when it appeared that the present officer has received no more than his predecessors, and that an adequate duty was performed; and when in addition to these circumstances, the usage has continued during a period which in many cases and in the case in question, has been considered as conferring a *prima facie* and possessory title, viz.—twenty years, we have conceived that an usage so circumstanced, ought to weigh materially in deciding what regulation ought in justice to be made for the future. The period of twenty years was suggested to us, not only by legal analogies, but by the procedure of the House of Commons, who by an order dated 31st March, 1814, directed a return to be made to them of any increase of rate of the fees demanded and received in the several superior Courts of Justice, civil or ecclesiastical, in the United Kingdom, by the Judges and officers of such courts, during twenty years, on the several proceedings in the

same, together with a statement of the authority under which such increase had taken place. Our opinions upon the reasonableness of emoluments have also been materially affected by the great change in the wealth of the country since the order of 1743, the decrease in the value of money, and the increased rate at which skill and industry of all kinds are now remunerated. In giving weight to such considerations, we have acted, as we conceive, upon the same principles which have repeatedly induced the legislature to interpose for the augmentation of the emoluments of persons in public stations, and for the same reasons which influenced the Commissioners in 1740, and Lord *Hardwicke* in 1743, and which lately induced Lord *Erskine* and Lord *Eldon*, the one, to augment the fees of the solicitors and sworn clerks, and the other the fees of the examiners in the Court of Chancery.

The recommendations which we have humbly presumed to lay before your Majesty, as to the allowance or disallowance of emoluments, in the subsequent part of our report, are the result of the various considerations above stated.



No. 6.—Page 360.

Review of Lord Redesdale's Pamphlet, and of the Chancery Report and Evidence.

FROM THE TIMES JOURNAL, 1826.

August 31st, 1826.

A Pamphlet, entitled "*Considerations suggested by the Report made to His Majesty under a Commission authorizing the Commissioners to make certain inquiries respecting the Court of Chancery,*" has been for some time before the public. The

appearance of a second edition presents a fit opportunity for taking some notice of this work, which we were prevented from doing on its first publication, by more urgent affairs. It comes out in an anonymous shape; but it would be an useless affectation to seem not to know that it is from the pen of Lord Redesdale. It may be that modesty induces the author to shrink from the fame which fairly belongs to his attempt; but, however becoming this may be to his Lordship, we could not forgive ourselves if we withheld from the public the name of the person to whom they are indebted on this occasion.

It will be remembered that Lord Redesdale stood second among the Commissioners to whom the task of inquiring into the state of the Court of Chancery was referred; and it was not unreasonable to believe that his Lordship's experience and skill in the profession would ensure success to the objects of that inquiry. What less than this could be expected from the author of a law-book, which for learning and acuteness, and even elegance (if that word can be properly applied to any English law-book), is perhaps inferior to none in our language, than that he should point out to his less skilful colleagues the errors and difficulties which time and the changes of society had brought into our system of equitable jurisprudence? What task could have been imagined more gratifying to a nobleman who was enjoying rank and wealth as the reward of his labours in the Court of Chancery, than that of removing from it the evils which make it a curse and a plague to the whole community?

The appearance of the Chancery Report soon convinced people that very little indeed was to be expected from that quarter in the way of remedy. Still, as it was a beginning, and the first attempt which had been made to master the sluggish demon of Chancery, they were disposed to receive it as an omen of success. But Lord Redesdale's name was not affixed to the Report, and it was said that, not agreeing

with his colleagues, he had the intention of making public his views on the subject. His separate Report was therefore waited for with no small anxiety, because it was expected that it would contain a correction of all the blunders made by the Commissioners, and an indication, at least, of the means by which the evils complained of were to be remedied. At length it appears in the shape of the pamphlet before us; but so far is it from proposing any remedy, that it avows almost in plain terms, and still more forcibly by the conclusions which no one can choose but draw from it, that the ills are beyond cure. It attacks the propositions annexed to the Report, but it substitutes nothing for them. His Lordship thinks that they can do no good, but he does not tell what other measures might be useful. He sneers at the weakness of the Commissioners in having yielded to "clamour," and dismisses 70 out of their 188 propositions, with as much indulgence as his contempt will allow of. The triumph of the small fry, who are interested in keeping the Court of Chancery as it exists, is without bounds at his Lordship's victory; but as we are not so happy as to concur with this *clique*, we have taken the liberty of looking through his Lordship's considerations, and (endeavouring always to preserve the respect which is due to him) we cannot bring ourselves to think that the public will concur with him and his friends in the joy which they express.

At the beginning of the work, the object of the Commission is recited with great accuracy and in a technical form. The writer proceeds to state, that complaints of the unnecessary delay and unnecessary expense attending proceedings in the Court of Chancery, appear to have induced the issuing of this Commission, and it was the "duty of those who acted under its authority to inquire first, whether the imputations of unnecessary delay and unnecessary expense were well founded, and if well founded, what were the causes of such delay and of such expense, and what reme-

dies might be applied to the evils arising from such delay and expence." Nothing can be more fair than this statement of the subject, and as the paragraphs immediately succeeding disclose the author's intention of differing from the compilers of the report, it would be not too much to expect, that his Lordship, if he pointed out in what respects the remedies proposed by the report were inefficient or impracticable, would also suggest those which, in his opinion, were calculated to obtain the object sought by the commission. There is obviously only one other thing which was left for him to do, that is, to admit that the vices of the system are so many and so deeply seated, that they baffle all attempts at cure: This, it must be confessed, Lord Redesdale has done in a way which is, to a certain extent, satisfactory; because it is always satisfactory to know the worst of our misfortunes: whether his Lordship's friends will like this "backing" of them, remains yet to be seen.

Lord Redesdale proceeds to divide the evils which may belong to such a subject as that of which he has given so clear an enunciation, into *evils necessarily incidental*, and *evils not necessarily incidental*, to the established system. The first, he admits, can only be avoided by a change of the system; the other, he thinks, "may *probably* be in some degree avoided." He says, that as far as the inquiries of the commissioners have been applied to the latter evils, they seem to have been properly applied, although it may be doubted whether all which they have proposed is calculated to meet those evils, and whether some of the changes they have suggested may not produce greater evils than those intended to be removed. This is all sufficiently vague, and although these and a thousand things besides "may be doubted," we shall be never a whit nigher the remedy through Lord Redesdale's means, unless he is so good as to do something more than doubt about them. *

The noble author very patiently enumerates his doubts and the difficulties of the subject, without ever suggesting any means of avoiding them, and suddenly breaks off with a declaration which is extremely *naïf*, and which gives an extraordinary insight into his Lordship's notions on this subject. "Whoever," he says, "considers the administration of justice by courts of civil jurisdiction of any description, with a view only to the personal interests of the parties engaged in litigation, has a very imperfect view of the subject. In very few cases comparatively ought the parties litigating to be considered as the only persons interested in the result."

Under his Lordship's favour, we believe the direct contrary to be the truth. We believe that the cases are very few in which the interests of the parties litigating do not represent the interests of the community, and in which a wrong suffered by one is not felt by the other. The increased wealth, commerce, and population of a state require some sacrifices to be made from the simplicity with which justice ought otherwise to be administered; but not such sacrifices as the noble Lord insists upon. The cases in which parties litigant are to suffer expense and delay for the good of the community, should at least be "comparatively few," because they ought to be only the exceptions to the common rules by which property is secured and justice distributed. It is difficult to imagine an instance which will support the spirit of Lord Redesdale's assertion; the letter of that assertion may indeed be made out by what the Lord Chancellor has done in the case of some of the fraudulent joint stock companies which have been before him. There he has acted upon the principle of the judge (Lord Thurlow) who said, "I can't order an account to be taken between two men on Hounslow-heath;" and has intimated to the parties, plaintiff as well as defendant, that as the subject of their dispute was a piece of impudent knavery, he would only permit the proceedings of

the Court of Chancery to be made the means of dissipating in litigation that which had been acquired in fraud. This decision is far enough from being reconcilable with the principles of abstract justice; but still, as it prevents greater injustice, it may be acquiesced in. It is, however, very different from the comfortable intimation of Lord Redesdale, that "expense and delay are evils often severely felt by the litigating parties; but they may be evils suffered for the public good, and for that reason must be submitted to by those who immediately suffer." This is going further than even the enemies of the system have ventured, and describes the Court of Chancery as an angry power, which can only be propitiated by loading its altars with victims.

Lord Redesdale then occupies a few pages by insisting on the advantage and necessity of having one head or supreme authority in the Court of Chancery, to which appeals may be made from all the subordinate powers of the same court. According to the present constitution of the court, no one will be disposed to deny this position; but every one will be surprised to find that the author takes all this trouble, not to improve the practice of the court, or to diminish the two great evils of delay and expense, but to combat a proposition in the report for giving the Masters in Chancery a power of finally deciding the sufficiency of answers. The ingenuity and artfulness with which this part of the work is managed are highly creditable to the author's legal skill—whether the use to which that skill is applied is equally honourable to his character, is quite a different question.

The author says, that in order to understand the subject in all its parts, it is necessary to take an extensive view of the jurisdiction of the Courts of Equity; and he then proceeds to give a succinct sketch of the rise of such courts in England, and their progress until they attained their present condition. This consists of a detail which was already fa-

miliar to every one at all acquainted with the history of English jurisprudence, but it appears to be introduced in this place (as indeed most of the noble author's statements are) for the purpose of supporting his own assertions, rather than of conveying information to the minds of his readers. He goes on to say, that it is also necessary for the purpose of forming a judgment on the report, to inquire what has been the machinery of the Court of Chancery, and what it now is. This brings him to that which seems really to be the only part of his pamphlet which is written in earnest. He describes the first appointment of the six clerks, and the duties of their office as it then was. What those duties are now, the curious may learn by reading the very singular evidence given by Mr. Vesey before the Commissioners. At length the halcyon times in which the six clerks and their seventy-two assistants (each clerk having ten sworn and two waiting clerks) gently slumbered over the court, were broken up, and the irruption of attornies into the demesne of Chancery is bewailed by his Lordship in good set terms. To this circumstance Lord Redesdale gravely attributes the greater part of the distress and misery which the delay and expense of the Court of Chancery occasion to the whole community. In the evil year 1729 he says "a statute was passed authorizing the admission of attornies as sworn solicitors in the several Courts of Equity, under certain regulations, and from that time the clerks in the Chancery Office have lost their importance!" Consequent upon their fall has been the rise of attornies. The difficulties produced by this circumstance (which, however, are not very clearly pointed out), his Lordship says, have been increasing, and will increase. "In truth, the despatch of business depends almost entirely on the skill, the diligence, and attention of solicitors; who are become a body closely and intimately united as solicitors, and too powerful, as well as too numerous, to be effectually controlled. *But they are the chief*

objects of advantageous control." His Lordship then enumerates the qualifications which "a great solicitor" ought to possess. "He ought," he says, "to be intimately acquainted with the business of all the courts of common law; to have a considerable degree of knowledge of law in general, and especially of the law of property, personal and real." Perhaps he ought, strictly speaking, to know all these things; but it is notorious that "great solicitors" do know very little indeed of any of the subjects mentioned by the author, and that they are resorted to by their clients as brokers are employed by merchants, not to sell their own wares, but to procure those of others. Considering the business he has to do, paradoxical as it may seem, it is nevertheless true, that an attorney is the better for knowing little or nothing of law, and for trusting for all he wants to persons whose business it is to acquire legal knowledge.

But Lord Redesdale says again, that "unless some important change can be made in the mode in which business is now conducted, no material relief can be afforded to the suitors of the Court of Chancery, either as to expense or delay; for *the great cause of expense and delay is the mode in which business is now conducted*, not only in suits in Chancery, but in all matters under the management of solicitors." It may be so; but how would this be mended by having clerks in Court instead? What magic is there in the six clerks' office? or what virtue in its inhabitants, that they should be exempt from the infirmities which attorneys and all "flesh is heir to?" The charges of mutual indulgence, negligence, forgetfulness, and incompetency, which Lord Redesdale brings against the solicitors (and a great many other faults and failings which his politeness and good nature will not permit him to mention) would be incurred by the clerks in Chancery, unless they could be brought from "Heaven's Chancery." And what does it signify to the unlucky suitors by whom their property shall be con-

sumed? Since it is decreed that they are to be bitten, they must be fastidious beyond all reason if they can have a choice as to the species of the vermin which shall torment them. The public opinion respecting the virtue and learning of attorneys has become proverbial; but so it has also with respect to many other classes of the community. Nobody stipulates that a scavenger shall be a person of clean habits; and a multitude of evils are submitted to, because they are either useful or necessary as regards the present state of society.

But there is another consideration to which this part of Lord Redesdale's pamphlet gives rise, and which applies much more stringently to the matter in question than any thing which his Lordship has written. Let it be supposed that the manner of conducting business in the Court of Chancery is the great and sole cause (as we believe it is not one of the least) by which the delay and expense are produced; and who is to be blamed for the existence of that evil? Has not the Lord Chancellor been for half a century cognisant of the fact,—have not personal observation and experience taught him exactly how far this evil extends,—has he not held in his own hands for 26 years, (with the interval of only one year during that period), the power of regulating the practice of the Court of Chancery, and of curbing the solicitors? If it be true that the body of solicitors is such a monster as Lord Redesdale describes, extending itself, as he facetiously says, over “ a district of 20 or 30 miles, which is called London,” an order in Chancery could effectually control it, though it had as many heads as Hydra. And yet, the Lord Chancellor having the power to remedy this evil—feeling, as he attests daily by his tears, and still more pathetically by his mirth, a vehement desire to relieve the suitors of his court from the delay and expense which they suffer under, and with the whole power of public opinion to back him—refuses or neglects for six-and-twenty

mortal years to do that which his bosom friend, "his yoke-fellow in equity," his noble coadjutor, and affectionate apologist points out as a sufficient remedy. It may be that Lord Redesdale is aware of the conclusion that must be drawn from this statement, and that, loving the Lord Chancellor as he does, he yet loves truth better; or it may be (but this is a less charitable supposition) that in his haste to throw an imputation from the Chancellor, he has left him undefended in one of his weakest parts. For it must be remembered that the head and front of the complaints against the Chancellor are, that he has omitted to do that which was within the compass of his power, and that which his duty to the public, as well as to his own reputation, imperiously called for. Again and again may Lord Eldon say, "God protect me from my friends, and I will deal with my enemies as I may."

This point being thus disposed of by the noble author's anathema against attornies, he proceeds to attack another cause of expense and delay in the prolixity of the pleadings in Chancery. All that is said on this subject is very true; but if the prolixity of proceedings were all that the suitors in Chancery had to complain of, their cries would neither be so loud nor so universal as they are now. The unnecessary length of bills and answers can, obviously, have nothing to do with the needless expense of the forms of practice in the Court, in the Six Clerks' Office, in the Masters' Office, and in the thousand and one other contrivances in the machinery of the Court of Chancery, for taking toll from the miserable suitors. If there were no other or no greater evils than this, they would indulge themselves in jokes (for this is merely ridiculous); but they would not be suffering agonies which "lie too deep for tears." There is a great deal of good sense in all that Lord Redesdale says respecting the absurd length of modern conveyances and pleadings.

Nothing is better deserved than the censure he bestows on the tedious trash which appears every term in the shape of "Reports," and which seem, in general, to be a trial by the dull rogues who manufacture them, to ascertain who can convey the least meaning in the greatest number of words. "Redundancy is," as he says, "the vice of the age," and in legal matters it is likely to continue so, until we can reduce our laws to the blessed condition of those of Brobdignag, none of which exceeded twenty-two words, and where it was a capital crime to write a comment on any law.

His Lordship then enters upon that which seems to be the main object of the pamphlet,—an examination of the propositions annexed to the Chancery Report. Some of these propositions are so obviously impracticable, and others of them so inefficient, that it is difficult to conceive how they could be agreed upon by the persons under whose names and authority the Report was made. Lord Redesdale's objections to almost all of them are well founded, and if he will be contented with so much credit as belongs to him for having shown their futility, he may enjoy it without dispute. But it must be remembered, that they are such objections as must strike every one, acquainted with the practice of the Court of Chancery, on reading them. It required no extraordinary skill or learning in the profession to discover the errors or inconsistencies which they present, and the Commissioners must have been the dullest and most obstinate of human beings, if they could make such propositions after the objections against them had been once stated. There were fourteen persons named in the commission, of whom Mr. Justice Littledale may be said not to have attended at all, because his other duties prevented him. Of the thirteen remaining, the Lord Chancellor and Lord Redesdale were the only persons who possess so much skill and so much knowledge, practical and theoretical, as would enable them satisfactorily to

execute the task which His Majesty's commission had imposed upon them. We say this with as little inclination to under-rate the qualifications of their coadjutors (which are in other respects highly creditable,) as to compliment those of the noble Lords who have been practised in these subjects for very long periods, and have acquired an unquestionable authority in them. We find, however, that these noble Lords are opposed to all the rest of the commissioners, and we think that, as far as Lord Redesdale is concerned, this opposition has been carried on in an unbecoming manner. No one will deny that it was his duty as a commissioner to have made to his colleagues the objections he now puts forth. No one can doubt that if they had been made, they must have materially changed the nature of the propositions and of the Report. Nothing can be imagined less becoming the rank and character of this noble person, than to lie by until the Commissioners had committed absurdities and errors, and then to come out exultingly, and bring that knowledge which was (so to speak) retained for the use of the objects of the Commission to bear against and defeat it. His Lordship makes more than one contemptuous allusion to what he calls "the rage for innovation;" but there is hardly less of "*rage*" *against innovation* in the feeling which has induced him to miss the opportunity of adding to his own reputation and relieving the country from a monstrous burden, and to choose rather by a trick of special pleading to incur the censure of all honest and reasonable men.

His Lordship concludes with a remarkable passage which shows the feeling that has prompted his amiable exertions on this occasion. Speaking of the Commissioners, and of their failure, he says—"If, in the opinion of the writer of these observations, they have erred, their errors are by him imputed to the difficulties which belonged to their undertaking; to their anxiety, in many instances, to *effect what he*

concessions cannot be effected; and to their having yielded in some points to that clamour which in others they have firmly resisted." A most comfortable picture, it must be admitted, of the Court of Chancery, and an avowal, frank if nothing else, that the King and his Commissioners can neither do nor devise aught that may mend it. The Lord Chancellor must be delighted beyond measure at this result of his friend's labours, and at the sincere homage which is paid to the institution under which they have both thriven. Perhaps too, at some future time, less enlightened persons than these noble Lords, being convinced through their testimony that there is no hope of amendment, will examine into the real value of a tribunal which exists only in England, the origin of which, as Lord Redesdale has shown, was accidental, and the good of which has become so mixed up with evil, that it is inaccessible to most men. Amputation is only to be resorted to when other remedies have failed; but it has at least the recommendation of being an effectual cure.

If the noble author can console himself with the credit which some of his friends attribute to him, of having "smashed the Chancery Report," it is well for him, for that is all he is likely to get by this feat; but he has at the same time opened the eyes of the people to the extent of the grievance which the Court of Chancery has become. It may be, too, that he has roused enemies, who if they want his skill and learning, will make up that deficiency by their earnestness and honesty, in endeavouring to remedy the evil; and that the public, finding that those legal authorities from whom the most efficient aid was expected, are not to be relied on, will put into lay hands the task of redressing wrongs which the whole community groans under.

THE CHANCERY REPORT.

TIMES.—*September 14, 1826.*

It is probable that the state of the Court of Chancery, and its present practice, will form one of the most interesting subjects to which the attention of the new Parliament is to be called. Lord Redesdale's pamphlet, which we recently noticed, may be taken as an intimation that the advocates of the present system have determined to lend no aid to the attempts which less interested persons have made to abate the evils complained of; and as their triumph is principally founded upon the failure of the Commissioners to get at the bottom of the abuses in the Court of Chancery and to suggest a fit remedy, it becomes necessary that the nature and effect of the report, and still more that the general tendency of the evidence on which it is founded, should be universally comprehended. The technical obscurity which surrounds the report renders it almost unintelligible to persons who are not familiar with legal subjects; and even of those who are better acquainted with them, many are deterred from entering on the perusal by the voluminous shape in which it appears. Two immense folio volumes, containing between 1,300 and 1,400 closely printed pages, are enough to frighten most folks from an undertaking which promises no satisfactory result; and yet, to enable the public to form a fair opinion upon what the Chancery Commissioners have done, and what remains for other persons to do, the substance of this report, and the evidence, ought to be placed before them. That prolixity which is the common opprobrium of all legal compositions, extends itself to this subject, and while it renders the task of compressing it less difficult than it would otherwise be, it enables us to communicate, within

reasonable limits, so much of it as is necessary to be known for all useful purposes.

It is not necessary to advert at length to the manner in which the Commission was formed, nor to the want of sincerity which was visible in the selection of the persons by whom the inquiry was to be conducted. Those considerations have their full weight in the mind of every man who thinks on the subject; but it is particularly advisable that they should not be lost sight of in looking at the extraordinary documents under our hand, because they can alone explain the manner in which the commissioners have conducted their inquiries, and the reluctance they have betrayed in examining, as they ought to have been examined, the abuses which stared them in the face at every turn. The paper presented to His Majesty may be called an apology for the abuses in the Court of Chancery, or a defence of them; or, if the plain truth be uttered, an attempt to conceal the greater evils which abound there by unveiling the lesser ones; but it is not a fair report,—it is any thing but an execution of the commission which the King intrusted to them. They seem to have placed themselves in a posture of defence—to have regarded the commission as an attack upon the Court, and themselves as its defenders; and they have replied to the inquiries put to them, not by investigating and communicating the whole truth, but so much of it, and that in such a shape, as would throw the least discredit upon the persons whom they undertook to champion. They have replied in the spirit which Hudibras attributes to defendants in Chancery—

“ Does not in Chancery a man swear

“ What makes best for him in his answer ?”

and have exercised great ingenuity in slurring over all the most objectionable parts of the subject, in avoiding any

censure of the system, and in praising either directly or by implication all the persons engaged in it.

The fairest and most satisfactory way of dealing with the Report will be to show first what the Commissioners have done.

The Report states that the Commissioners examined, at much length, many persons of high professional character, and great experience, and received the evidence of every person who thought fit to tender himself, as well as information from official sources. After stating, by way of precaution, that all the Commissioners do not concur in each particular suggestion, they proceed to give the result of their joint labours.

The common law jurisdiction of the Court is dismissed in a paragraph, because the Commissioners do not find any complaint made against it. They then go to the equitable jurisdiction of Chancery, which forms the principal object of their inquiry. They state the origin of it to have been by petition in such cases where the simple forms of the common law were insufficient to administer to parties adequate relief; and add, that at the present time the changes which society has undergone have brought them new subjects for the operation of an equitable jurisdiction, which the Commissioners state very clearly. "One great source," say the Commissioners, "of the extension of the jurisdiction of Courts of Equity has been the invention of new modes of disposing of property, particularly in the form of trusts, and the ingenuity of fraudulent contrivances; to which may be added, the power of disposition of all property by will—the vast increase of personal property which may be disposed of by deed, or by will, or distributable according to law upon intestacy; the difficulty of obtaining complete justice under the forms of the common law, against persons accountable for property to others, as executors or administrators, or as trustees or agents; or as partners in trade, or

joint owners of property; or in a vast variety of other ways, in which partners may become so accountable; the demand of justice for the specific execution of contracts of various descriptions, and the complication of interests arising from intricate transactions, for which the course of the common law, in the simplicity of its proceedings, can give no adequate remedy." Besides the extensive duties which the investigation of these subjects imposes upon the Chancellor, he has to decide all matters of lunacy, of bankruptcy, of such subjects as are specially delegated to him by act of Parliament, to act as Speaker of the House of Lords, and to perform multifarious and important functions as a Privy Councillor, which are somewhat tediously enumerated. The assistance of the Vice-Chancellor, and of the late Lord Gifford, diminished some of the load of the Chancellor's duties.

The Commissioners think that the general plan of the proceedings in the Court of Chancery is as well calculated as any system that could be devised to secure the sound administration of justice, and although they admit that circumstances may have led to some abuse, some defects which may now be corrected, yet they are "satisfied that much misconception has arisen relative to the causes of that delay which so frequently occurs in the progress of a Chancery suit; and that much of it is imputable neither to the Court, nor its established rules of practice, but to the carelessness of some parties, the obstinacy or knavery of others, or the inattention or ignorance of agents." Meaning always that the "some parties" are not the officers or in any way necessarily belonging to the Court of Chancery.

The report then enters on "the practice of the Court," and beginning at the subpoena, proposes a new form of that writ, so as to acquaint defendants with the nature of the suit instituted against them, a more simple and effectual manner of serving it, and a reduction of the time at present allowed

for defendants to answer to bills. The absurd and circuitous mode of compelling answers by means of a tedious, expensive, and useless process, it is also proposed to alter, and to give a power to the masters in the first instance to report as to the sufficiency or insufficiency of answers. Against this proposition it is that the fire of Lord Redesdale's pamphlet is principally directed. An attempt is also made to prevent the wilful delay of parties for interested purposes, which, although little is said about it in public, is not one of the least abuses in the Court of Chancery. It is proposed that plaintiffs shall be compellable to proceed on the application of defendants within reasonable time, and not be permitted, as they are now, to hang up a cause for a year and three-quarters, without taking a single step in it, and yet continue perfectly within the orders and practice of the court.

The manner of taking evidence in the court next engages the attention of the Commissioners, and after considering the various objections which have been made, they are not prepared to recommend any very considerable changes in the present mode of taking evidence. They, however, suggest some regulations with respect to the examination of witnesses by the examiners in London, and that the execution of country commissions for the same purpose should be intrusted to persons of experience, to be appointed by the Chancellor. The indignation of the Commissioners, slow as they are to be moved, appears to have been excited by the evidence given to them as to the inefficient, often iniquitous, manner in which this duty is executed, and the lavish expenditure which attends it. The Masters are also to be empowered to examine witnesses *visá voce*, upon inquiries ordered to be made before them, instead of pursuing the more expensive and less satisfactory course by means of affidavits, which is now the usual practice. Some other regulations to prevent parties from enlarging the publication or

less he be very stupid and very idle, he must understand the particulars of the cause, however complicated, and when he hears the decree pronounced by the judge, it cannot be necessary that he should possess more than ordinary talents for business, and such knowledge of his profession as he must have acquired by practice, to take down minutes, and afterwards in the leisure of his own chamber, and with the assistance of the papers in the cause, and the attorneys on both sides, if he chooses to call for them, to draw up the decree. And yet the Commissioners have recommended that the places of those Registrars (who are at present regularly trained up in the offices, and practiced for an average of twenty-five years before they attain to the full dignity of attending the Court) should be filled up by barristers of ten years' standing, for whose ability the office would give full exercise, and to whom the present profits would be a sufficient inducement. The amount of these profits are, however, nowhere accurately stated.

At first sight this suggestion seems only to be for the purpose of extending the patronage of the Judges of the Courts of Equity, who are to have the appointment of these barristers; and however objectionable this might be in principle it would be easily got over, if the evil rested here. But the truth is, that this is one of the suggestions which has already decided the fate of the little good that could be hoped for from the other parts of the report. To effect this, it will be necessary to have a considerable sum of money to pay to the present Registrars an adequate compensation for the loss of their offices: and it is also proposed to increase the salaries of the clerks in the office, who will by the new arrangement be deprived of their chance of succession. It has been said that an application has been made on this subject to one of the most influential members of the Government, and that he dismissed the matter very shortly by an intimation that no money would be granted for any such purpose, the object of

the commission having been to save the time and money of the suitors of the Court of Chancery, but not at the expense of the country. It is impossible but that this refusal must have been foreseen by some of the members of the commission, and (Heaven forgive us if we do any person wrong!) we shrewdly suspect that it has been inserted with a view rather to ensure the defeat of the amendments which have been proposed, than with any honest belief of its expediency.

The Commissioners having brought their labours to this point, proceed to examine the state of the practice in the Master's office; but as this topic requires to be considered somewhat minutely, and as we have already got through one half of the report, we shall reserve the remainder for a future article.

THE CHANCERY REPORT.

TIMES.—September 20, 1826.

The Commissioners state, in the commencement of their examination into the practice in the Master's office, that there are very few cases which can be brought to a final decision without inquiries before the Master. This statement which is perfectly correct, will give an adequate notion of the important part which these institutions form of the whole establishment of the Court of Chancery. All inquiries into claims, the investigation of all accounts, the examination into, and proof of whatever facts are in dispute between the parties, or which must be ascertained for the satisfaction of the Court; in short, almost all those matters which in courts of common law are proved by witnesses before a jury, are established in the Court of Chancery at the Masters' offices.

The management of causes, the accounts and conduct of solicitors, examiners and trustees, the management of minors, allowances in other circumstances, and more to be passed through these offices. Here it is that there is the remarkable post-ponement of judgment by the Chancellor, the greatest delay is found to exist, and in these places those despotic expenses are incurred which consume estates and devour the parties alive.

The Commissioners think that the length of time consumed in litigation in the Masters' offices has been one of the most permanent subjects of complaint against the Court—a complaint, they say, “not unfounded, although in many cases unjustly directed against the practice of the Masters' offices.” It is not very easy to quarrel with the Commissioners when they say this; but it appears afterwards that they think the misconduct of attorneys who protract suits for the purpose of increasing costs is here, as well as elsewhere, the main cause of the evil. The remedy which they propose, is to give the Master a more efficient control and direction of the proceedings of a cause after it is referred to him. At present the attorneys move as slowly as they please, and can, if they are dishonest enough to do so, carry on or suspend the proceedings in the Master's office as long and at their own pleasure. The Commissioners do not scruple to impute that many attorneys are guilty of negligence and some even of knavery in this part of their practice, that they are often ignorant of their duty, that they employ incompetent persons in the execution of it, and that these offences, together with their mutual indulgences to each other, tend to produce the greater part, if not all the delay and expense in the Master's office. The last charge does seem a little unbecomingly by the attorneys, who are commonly like the wives, more disposed to eat one another than to display a culpable indulgence. The other charges are perhaps well founded; and nobody can wonder that they are so, when it

is considered that the privacy and shade of the Masters' offices are extremely well adapted for the successful practice and the effectual concealment of the frauds which have been pointed out. The Commissioners do not, however, think it necessary to remark that the Masters and the Masters' clerks, who are paid wholly by fees and gratuities, have a direct interest in the number of warrants taken out, that is to say, in the number of steps which are, or by a legal fiction are supposed to be, taken in these offices. They do not mention a practice which exists among the Masters' clerks (the Masters, of course, knowing nothing of the matter) of arranging with attornies how many warrants a particular inquiry "will bear," and issuing at once so many as they guess will be allowed on taxation, without waiting to know that they are necessary, and without insisting upon any thing more than formal attendances by clerks for a large proportion of them. And yet the Commissioners say they believe there is no foundation for the charge that proceedings are lengthened in the Masters' offices with a view to the increase of emolument. What they believe is their own affair; what the public will believe, when they find that delay does exist, and that the direct tendency of that delay is to increase the emoluments of Masters, Masters' clerks, and Attornies, must, we are disposed to think, be the direct contrary.

The Commissioners then come to that evil about which nobody doubts—the payments for copies of proceedings in the Master's office. In order that the uninitiated may know the extent of this burden, it is only necessary to inform them, that all the statements, documents, and other papers, which, in the course of a reference, it becomes necessary for any of the parties to lay before the Master, are copied by his clerks, and furnished to each of the other parties, at three times the proper charge. The sum to which these copies amount is, in some cases, monstrous. The Commissioners admit that these payments "form at present the

principal source from which the Masters are remunerated," and it is a part of the duty of a Master's clerk to see that the solicitors of the various parties are properly qualified to appear before the Master, by having taken and paid for their copies. A prompt and liberal manner of paying for these copies, whether they are necessary or not, is also found (as we are informed) to have a marvellous effect in propitiating those gentlemen who have a direct interest in seeing that this branch of their emolument is kept as flourishing as possible. This abuse the Commissioners propose at once to do away with, by laying down as a rule in future, that the charge for copies shall be reduced to the ordinary amount (perhaps two-pence per folio), and that parties shall no longer be under the *necessity* of taking copies. The deficiency which the incomes of the Masters will experience in consequence, is to be made up to them by salaries. The other Masters' fees the Commissioners think are too inconsiderable to be noticed, but they have nevertheless suggested a revision of the whole subject of fees in the Masters' offices.

That part of the report which relates to this subject is ably drawn up, and as far as it goes, with respect to remedying the existing evils, is, perhaps, the least exceptionable part of the whole document. The returns made by Master Stephen and Master Courtenay to the Commissioners have furnished the materials, and this part of the report is little more than an embodying of those two returns. But although we have no fault to find with the suggestions in the report, we have reason to complain that there is not as much stated as the Masters do know or ought to know of actual abuses. They have stated only as much as is necessary to justify the alterations which they recommend, but not so much as the Commissioners and the public ought to be made acquainted with. It is notorious that enormous expenses and ruinous delay are occasioned by the manner in which the business in the Masters' offices is conducted; that very large sums

are expended there, in the shape of fees, which are not glanced at by the report, which the Masters in no respect share, and which they had never investigated, because they felt they had not the means of abolishing them. Still the opportunity which this Commission afforded of laying open these abuses, ought not to have been passed over; and although we do not wonder that the Masters should be little inclined to throw any imputation on their own offices, we regret to see that the Commissioners did not exercise vigilance enough, or were not sufficiently independent, to pursue an investigation the result of which must have been useful.

The question which occurs at almost every step of this inquiry, suggests itself here in its most forcible shape. Why is it that the Lord Chancellor, who must have seen and heard of these things over and over again for the last half century, has never attempted either by his own authority, or by the authority of Parliament, to rectify the malpractices in the various departments of his court? There is an odd passage on this subject, in the return of Master Stratford to the Commissioners. It will be remembered that this is the gentleman who wrote an angry letter to the Chairman of the Fee Committee, five or six years ago, in defence of the emoluments of the Masters. The return contains many suggestions not remarkable for their sagacity, (among which is a very feeling recommendation, that all the business of the office should be got through before dinner time); and it concludes with a strong and well-deserved censure on the Lord Chancellor. After submitting his preceding observations to the Commissioners, Master Stratford says—"It is a matter of regret, looking to the circumstance that the more material ordinances, heretofore made for the regulation of the several offices of the Court of Chancery, were made by the Lord High Chancellor for the time being, or persons holding the Great Seal from the time

of Lord Bacon downward, not forgetting even the time of the Protectorate, and much less the times of Lord Clarendon and Lord Nottingham; *and looking also not only to the learning, but the experience and wisdom of the present Lord High Chancellor, that he has not followed the example of his great predecessors, and of himself determined what alterations in the practice of the several offices of the Court may now be usefully made, and ordained accordingly.* It could not be expected that a slip of this sort would be forgiven; and by way of punishing this incautious Master (for it can be in no wise necessary), a witness is examined only for the purpose of proving that Master Stratford would not permit an inquiry to proceed in his office, because one of the parties had not taken and paid for some office copies, and that his refusal was not remarkable for the courteous manner in which it was pronounced—a fact which might be readily believed without having been formally deposed to.

The report then proceeds to make some suggestions of minor importance. It is recommended that all applications for further directions shall be made before the Judge who heard the cause originally; that the Accountant General shall invest all monies which come to his hands, without waiting for the request of the parties as he does at present; and that the *gratuities* in this office shall be abolished, but the fees retained.

The practice of the Court with respect to the forms of pleading is then touched upon; but very slightly, and with evident reluctance. They extend the power which suitors have at present of applying by petition instead of by bill; but this in so small a degree, that it cannot operate as a sensible relief. They appear to have been quite aware of the evil, but the temptation of supplemental bills, and all the other delights of Chancery pleading, have been too much for their virtue, and they evade the subject with a hint that the “ample discretion of the Court” is sufficient to provide a

remedy for this inconvenience. We have already had so long an experience of the value and utility of that "ample discretion," as to know exactly how far it may be relied on.

It has been felt as a great evil, that in all cases where application has been made to the Court respecting some point on the trusts of a will or deed, it has not been thought enough to decide that point; but the Court has taken upon itself to execute the whole of the duty of the executors or trustees. The consequence is, that the Court of Chancery has become a great agency office for the management of trust estates, and this at an expense which is burdensome in all cases, and destructive where the property is small. The Commissioners call the knowledge of this fact, which has been confirmed by substantive decisions as well as by notorious daily practice, "a persuasion," and say nothing about remedying the evil, but trust that the "general alteration recommended in the propositions will do much good in this respect."

It is suggested also, that defendants shall be permitted to answer and avail themselves of a right to demur at the same time; that in all injunction bills, affidavits shall be made by the plaintiff and his solicitor that the bill is not filed for delay; that the same solicitor shall not be employed for plaintiff and defendant in a creditor's suit; that an executor or administrator shall, in the outset of a cause, state the amount of funds in his hands; and that the clerks in Court shall certify the state of any cause to parties applying, on receiving a fee of 3s. 4d.

A regulation is proposed for the purpose of limiting the number of counsel to two, and for preventing the monstrous folly of permitting the King's counsel to take precedence in all cases of those behind the bar. The practice of suffering King's counsel to make all the motions they may have, before any of the other barristers are suffered to move, pre-

vails in no other court, and is not only absurd and inconvenient in itself, but highly unjust to the suitors, because it compels them to intrust their business, for the sake of dispatch, to the King's counsel, who are at present, with very few exceptions, decidedly inferior to those who take their places behind the bar.

When the Commissioners arrive at the Clerks in Court, who are notoriously useless, they appear to be a good deal puzzled. They say, that if they had to frame a new system, it might be doubtful whether they should appoint such officers; but as no delay and little expense are occasioned by them, the Commissioners recommend no alteration. With respect to the office of the Six Clerks, they, however, cannot think (after having examined Mr. Vesey, jun.) "that there is sufficient occasion for six persons in this office, or that the suitors derive adequate benefit from the fees paid therein;" but they recommend them to be employed in the taxation of costs. Some trifling suggestions on the subject of costs, and a sort of side-stroke at the system of modern conveyancing, which they recommend to be looked into as one of the causes of the expense and delay in Chancery, conclude this section of the Report.

The Commissioners then come to the question whether any part of the business of the Court of Chancery can be usefully and beneficially withdrawn from it, and they recommend that commissions for examination of witnesses abroad shall be transferred to courts of law; that all writs of *habeas corpus* moved for before the Chancellor may be made returnable by him, if he shall think fit, before the common law judges; and that all new jurisdictions created by act of Parliament, together with that relating to benefit societies, shall be transferred to the Court of Exchequer. A recommendation to this latter effect has also been made by the committee on the appellate jurisdiction of the House of Lords.

The jurisdiction in bankruptcy the Commissioners think cannot be transferred to the advantage or satisfaction of the public. They recommend, however, the appointment of a Court of Appeal from the decisions of the London Commissioners, who shall have the power of examining witnesses *viva voce*, and afterwards transmitting the evidence to the Chancellor, who shall act upon it without permitting the parties to make out a new case. It is also recommended that no commissioner of bankrupt shall be permitted to act as counsel before the commissioners, an indecency which is practiced frequently by some of the barristers who are commissioners, and justified by them with an effrontery that can only be paralleled by the supineness of the Court.

Since the Commissioners trusted themselves upon this ticklish subject, it is somewhat surprising that they did not venture an opinion respecting the manner in which the law of bankruptcy is now administered, and at what expense. It is impossible to put this subject more strongly than has been done by Mr. Miller, who says—"The mere statement that 74 judges (The Commissioners) sit in bankruptcy alone, at about £23,000. a year, while three perform the chief part of the business in equity for about £20,000., and the 12 judges, who despatch the whole common law business of the country, cost little more than £50,000., is sufficient to supersede all argument on the subject." And yet to this expense the report before us proposes to add that of a separate Court of Appeal, the judges of which are to be paid their sittings at the same rate as the present Commissioners. With a recommendation that the office of Vice-Chancellor shall be put on the same independent footing as that of the Master of the Rolls, and an exhortation to the Counsel to consider themselves bound in honour not to certify cases for appeal in which there are not good grounds (the origin of

both which suggestions it is not difficult to trace to the Judge who is to be the most affected by them), the report terminates.

Upon looking back at the real amount of relief to the suitors, and of improvement to the Court, which has been proposed, it is impossible, however slender one's hopes may have been, not to be surprised that the Commissioners have ventured to risk their reputation with so little caution. When the evidence (with some of the points of which we purpose to make our readers acquainted) shall be looked into, this wonder increases, because it will be seen that the authors of the report were possessed of knowledge and power enough to have discharged their duty in a manner which would have been creditable to themselves, and beneficial to the public, and this, too, without attacking by any retrospective allusions the conduct or character of the Lord Chancellor.

The candour and sincerity with which the Commissioners have executed their task, may be inferred from these two facts:—the first, that they have made no mention whatever of the *delay* which is occasioned by the Lord Chancellor's repeated postponements of his decision; and the second, that they have given no account of the sinecure and useless offices in which the Court of Chancery abounds, and the exactions in respect of which form one (if not the most considerable) of the causes of the *expense* at which justice is there administered. These two points, the first of which amounts to a *denial*, the second to a *sale* of justice, and to which the attention of the Commissioners was especially directed, they have with most enviable discretion wholly omitted to inquire into and to report upon.

THE CHANCERY REPORT.

TIMES.—*October 7, 1826.*

Having disposed of the contents of the Report, the next object for consideration is the evidence on which that Report was founded. A great number of witnesses were examined by the Commissioners, and out of that number the depositions of 54 persons have been thought worthy of publication. They consist of barristers, commissioners of bankrupt, attornies, some of the officers of the court, and of the Lord Chancellor and the Masters' clerks. Their testimony is, of course, directed to various points; and in order to give a concise notion of its effect, it will be expedient to classify it according to the several conditions of the persons examined.

Five gentlemen, holding the rank of King's Counsel, were called before the Commissioners. The first of these was Mr. Bell, than whom no man can be better qualified, in point of experience, to give a satisfactory opinion as to the practice of the Court of Chancery. Thirty-four years of drudgery through the painful avocations of equity draughtsman, junior counsel, and King's counsel, have made all the details of the system as familiar to him as the cups and balls are to a juggler. Unfortunately for the purposes of the commission, as far as he is concerned, his labours have taught him nothing besides, and have evidently given him a habit of thinking that there is something so beautiful and holy in the mysteries of chicanery, that any attempt to improve them savours of profanation. His evidence is elaborate, and, it may be, very sincere; but it is hardly possible to conceive a more narrow view than that which he takes of the subject. No man understands better than he, all the niceties of pleading, and demurring and answering; the most minute ramifications of the proceedings in the Court

he knows as well as his alphabet, and old Laity has taught him to think them necessary. If he admits that there are evils, he deprecates any attempt to check them, and his prophetic soul labours with an indistinct horror at the mention of amendment. Like a doting lover whose passion is increased by the discovery of his mistress's faults, he seems to like the Court of Chancery all the better for its amiable weaknesses, and pardons the object of his idolatry, "whom every thing becomes," all her blemishes for the sake of her beauty. The rest of the community will perhaps, if they can find this quality at all, think that it is a

"Beauty too rich for me, for earth too dear."

But even Mr. Bell, loyal as he is to the Court, and attached as he fairly says he is to the Lord Chancellor, lets slip an admission in one part of his evidence, which touches the great evil, and which, as we have before remarked, has forced itself out, in spite of the Commissioners, more than once, in various branches of their inquiry. We mean the power which the Chancellor has always had, and has never exercised, of remedying evils, and relieving the suitors of his Court.

"I have only to state," says Mr. Bell, "that though the practice of the Court of Chancery (not only to satisfy the public, but in justice to itself) requires much correction, yet I must strongly deprecate any sudden changes which would go to overturn the system. Much should be left to the discretion of the Judges, who, I think, are competent without legislative assistance to make most of these reforms which have been alluded to; *and are best able to do it, as they may vary and alter their rules as experience demonstrates the necessity; and without the cordial support of those who are to carry them into execution, the best digested plans will fail.*"

This is no "invention of the enemy"—these are the words of a zealous supporter of the Court of Chancery, and if the opinion which is here expressed be correct, we may predict the success of the Commissioners from the "cordial support"

we find given to it by Lord Redesdale, who is the friend of the Chancellor, and, as some people believe, the organ by which he has chosen to express his own opinions on the subject of this report.

Mr. Cooke is the next King's counsel examined, and his evidence is wholly confined to the present forms of practice, and the suggestions which have been made for improving them. He expresses doubts as to some, disapproves of some, and thinks that others might be conveniently adopted.

Mr. Shadwell and Mr. Heald have also been examined, but it is difficult to conceive by what accident it has happened that the evidence of two men of their rank and experience should be without one single suggestion tending to further the object of the commission, or the slightest information which may be usefully applied. If they had been brought before the Commissioners by main force, they could not have given more dogged and sullen replies than they have thought fit to make. Possessing much more knowledge of the subject before them than most, perhaps than any, of the Commissioners, they have availed themselves of that knowledge only to puzzle their examiners. Those gentlemen soon found themselves reduced, by the uncommunicative style of their witnesses, to ask leading questions, and all that they were able to get was an affirmative or negative, either simply expressed or by repeating the terms of the inquiry. Mr. Shadwell's evidence is careless, full of bar-slang, and not very choice English. Mr. Heald's is rather more quaint, but not less cavalier, and both of them seem to have thought it an excellent joke to baffle the Commissioners. Mr. Shadwell talks about a plaintiff or defendant being "whipped up to the point," and "the right thing to do," and "the advantageous thing," and, again to use his own words, such like "absolute stuff." When he is examined on the subject of an alteration in the practice respecting plea and answer, the Commissioners ask him whether it is not an objection "that

the plaintiff may die before the cause is heard," and he replies, with a most amusing gravity, "He certainly may." He is asked, "Supposing, during the last two years, the Court had been relieved from the jurisdiction of bankruptcy altogether, are you of opinion that the state of business has been such that it would have been got through?" and he replies, "Indeed, I think so,"—an answer which would appear very singular, but that it is his favourite one throughout the examination; and he says, "Yes, I think so," as often and almost as pertinently as the Italian courier used to say, *Non mi ricordo*.

The evidence of Mr. Heald differs from that of Mr. Shadwell, rather in its form than in the spirit by which it is dictated. He is no less resolute in refusing all information, but he manages his replies rather more ingeniously than his learned friend. His great pleasure seems to be to lead the Commissioners to expect an answer of a particular nature, and then to give them one of a directly opposite tendency. As an instance, he speaks very respectfully of clerks in Court in two or three of his answers, and then turns round with a declaration, that he thinks they are of no use in the world. After bamboozling the Commissioners throughout the inquiry, he turns restive on their hands, and absolutely refuses to answer. They ask him whether it occurs to him "in what way it would be best to supply the deficiency of the present means of the Courts for the despatch of business, whether by subtracting any part of the present business of the Courts from the present jurisdiction, or by erecting any new Court, or by assigning to any inferior branch of the Court, or to any officers of the Court, any part of the jurisdiction?" To this Mr. Heald replies, "Every proposition stated in that question involves so many serious considerations, that I am quite unable to furnish any immediate answer." And the Commissioners finding they can make nothing of him are glad then to dismiss him. If these gentlemen were bent upon

showing their contempt for the Commissioners, they have certainly achieved that object in a manner which must satisfy them; but we cannot bring ourselves to think that they have answered the public expectations, or done that which, considering their professional rank and acquirements, might have been fairly looked for at their hands.

The evidence of the Lord Chief Baron is of a much more satisfactory description. He seems to have applied himself earnestly enough to give such information as he could; and as he is perfectly acquainted with the duties of the office of Master, his opinion is highly valuable. His observations on the manner of drawing up reports are useful and true, and his recommendation to abolish the copy-money need only be adopted to abate at once a monstrous evil. The power which he proposes to vest in the Masters, of correcting the improper conduct of attornies, by reducing their allowances on taxing their costs, would do away with another chief source of delay and expense.

Mr. Horne also gives evidence which concurs as to the points of practice (to which it is chiefly confined) with that of other witnesses.

This concludes that class of evidence which has been obtained from counsel of the highest rank in the Court of Chancery. It contains many points relating to the practice of the Court, which it is useful to know, and which are to be obtained no where so well as from persons of the witnesses' experience; but for all the real purposes of the commission it is lamentably deficient. With the exception of the Lord Chief Baron, all such of the witnesses as could have given useful evidence have not chosen to do so, and such as appear to have had the inclination have lacked the power.

The evidence given by counsel of the outer bar, which we come next to consider, is of a very different character. They seem to have had a perfect sense of the numerous

evils which prevail, and a sincere desire to remedy them. The information given by Mr. Bickersteth is, beyond all comparison, the most valuable; and the comprehensive view which he takes of the subject, the uncompromising spirit with which he attacks the evils that the Commissioners themselves seem afraid to handle, and the utility of his suggestions, offer a singular contrast to the notions which the King's Counsel, and many other of the witnesses, entertain. His answer to the first material question which is put to him, is a sufficient indication of the feeling which characterises his evidence. The question relates to the delay, and the remedy which may be provided for it. Mr. Bickersteth says,—“ I conceive there are many unnecessary delays which take place in the Court of Chancery; and omitting the consideration of the unnecessary litigation which arises from the imperfect definition, and consequent uncertainty, of the law administered by the Court, I conceive that unnecessary delay, vexation, and expence may be ascribed to the established process and practice of the Court; to the established system of pleading: and to the established mode of obtaining evidence. The causes of delay to which I have hitherto alluded, operate during the preparation of the case for hearing by the Court. The delay which happens after the case is ready for hearing, and before it is heard, and a decree made, appears to me to be attributable to the Court.” The examination is then continued at very considerable length on the first mentioned causes of delay—that is to say, those connected with the constitution and practice of the Court. It is impossible for us, consistently with our limits, to describe the particulars of this evidence. The points to which it relates are extremely multifarious, and the greater part of them of so technical a character, that they cannot be properly understood by any but professional men. The answers, however, prove not only that the witness is more perfectly acquainted with the most minute branches

of this part of the law than any other of the persons who have been examined, but that he has investigated the subject in a sound and philosophical manner, and that he labours under none of that superstitious dread of alteration which distinguishes most of the witnesses. The suggestions which he makes for simplifying the practice, and for increasing the velocity of the proceedings in Chancery, at the same time that their expense is decreased, deserve unqualified approbation; and it is to be regretted that the Commissioners, who have adopted some of them, did not incorporate the whole in their report.

The other cause of delay which Mr. Bickersteth says is attributable to the Court, the Commissioners handle as gingerly as may be. They postpone it until this witness's last examination, and then put it in the following form :—

“ In the commencement of your examination, you stated that one of the stages in which great delay is occasioned to the suitors, is in the stage between the setting down the cause and the hearing—that is, between the cause being ready for hearing and the hearing ?”

Answer.—“ I think that in many cases the delay which happens in that stage of the cause, exceeds the amount of all the other unnecessary delays put together ; and it is a delay of which, it appears to me, the suitors and the public have great reason to complain. When the cause is prepared for hearing, and set down for that purpose, I conceive that the suitors are then making a direct demand upon the Court for justice, and that every unnecessary delay which afterwards takes place, and is not occasioned by the parties themselves, is a violation of the laws, which forbid the delay of justice.”

With this answer the Commissioners appear to be fully content, and decline to ask the witness any questions respecting the other cause of delay which he mentioned, viz. that which occurs after the hearing, in making the decree.

The whole of this evidence is extremely creditable to the character as well as to the talents of the gentleman by whom it is given. There are many other witnesses who are perfectly competent to give good evidence, and many who have a desire to give as good evidence as they can, but we see none in which ability and honesty are united in so remarkable a degree as in that of Mr. Bickersteth.

Mr. Roupell is the next in this class of witnesses. His evidence is just what might have been expected from a gentleman who has spent the best 32 years of his life in the Court of Chancery,—acute and well-informed on all points of practice, but evidently too much impressed in favour of a system which he has so long acted under, to look with a very favourable eye upon any considerable alteration which may be proposed in it.

THE CHANCERY REPORT.

TIMES.—October 11, 1826.

The Commissioners appear to have directed their inquiries with great minuteness to the subject of bankruptcy. The notorious inefficiency and expense of the present mode of administering that branch of the laws has long excited universal complaints. Something has been done by the recent condensation of the statutes respecting it, by Mr. Courtenay; but the root of the evil obviously lies in the system, and in the manner of appointing such Commissioners as are now employed to put it in practice. Upon this point the Commissioners under this report have examined several witnesses, all of whom are Commissioners of bankrupt and barristers.

The evidence of Mr. Basil Montagu is among the most useful, and contains the greatest number of disclosures. The information which it affords is curious and useful. He says plainly, in answer to a question, that he thinks the tribunal in Guildhall, for conducting bankruptcy business, is "the worst constituted in the country"—and adds, because it "appears to me to administer justice with great delay and great expense; and, if it were not corrected by the Court above, he should say the minimum of justice." He then enumerates the evils; the uncertainty of decision, the privacy of the proceedings, the irregular attendance of commissioners, and their decision not being regulated by the majority. He is asked what he proposes for a remedy, and he suggests, that instead of 70, there should be six Commissioners, to whom all commissions (*if there is any necessity for commissions at all*) should be directed; that from the decision of this Court of Commissioners there should be an appeal to another tribunal, and then, in the case of any difference of opinion (but not as of right), a further appeal to the Lord Chancellor. He recommends, that of these new Commissioners one should have the power to act for the purpose of obviating an inconvenience which frequently happens in consequence of the difficulty of obtaining the attendance of three who now form a quorum. As an instance of this difficulty he mentions the following curious circumstance connected with the case of the late Henry Fauntleroy:—

"During the course of last summer (1824), a commission of bankruptcy issued against the banking-house of Marsh and Co. A very important question was likely to arise, whether the Crown was not entitled to the whole of the property, as one of the partners of the house was likely to be convicted of forgery, and if convicted before his bankruptcy was found, there was an opinion in the profession that as the King could not be tenant in common with any person,

the whole property would belong to the Crown; but of which His Majesty would not have any power to dispose, as in the city of London it belongs to the sheriff. It was necessary in one week to send two expresses to the Lord Chancellor in Dorsetshire to prevent the agitation of this question; and to my knowledge (for I was in the room) the bankruptcy of Henry Fauntleroy was found only five minutes before 12 o'clock of the day on which he was tried, and this was very much in consequence of the inability to proceed before Commissioners in London."

Respecting the expense which the administration of the law in bankruptcy entails on the country, and which, be it remembered, comes out of estates already insolvent, this witness has some useful calculations. Mr. Miller has estimated the expenses at £23,000., which is correct as regards the amount of the Commissioners' fees; but Mr. Montagu says, and proves pretty satisfactorily, that the whole amount of expenses which is annually incurred in administering the bankrupt laws exceeds £242,000.

The power of the Commissioners is evidently in many cases too great for such persons to be trusted with, and in others too little for the purposes of public justice. Their authority to commit is one which ought to be restricted, because exercising it, as they may do, in private, it is obviously possible that it may be abused, and it is too probable that the reluctance which some Commissioners may feel to avail themselves of so dangerous a power may induce them to neglect it, when it might be usefully exercised. Connected with this point, Mr. Montagu makes some very just animadversions on the conduct of the Commissioners of bankrupt generally, and particularly respecting those of the notorious 14th list, who have gained the unenviable reputation of committing to prison in a period of fifteen years, nearly twice as many persons as all the other thirteen lists put together. Mr. Montagu mentions the flagrant case of a witness whose

committal to prison was signed by a Commissioner who was not present at his examination; and this, not because the witness had prevaricated, but because the two hours, which was all that the Commissioners thought fit to give up to this business, had expired. The learned Counsel says very truly, that "such practice durst not exist if the proceedings were public. Intimations," he says, "were made to me, upon which I am ready to give my answers, if it should appear proper to propose questions, by which it was supposed, I conceive, that I should not notice this, as I did notice it to the Lord Chancellor in public, or that I should not notice it elsewhere: but Commissioners, be they who they may, know me very little, if they imagine I shall suppress any truth which I think ought to be communicated to check oppression, and to protect liberty which has been violated." Mr. Robert Grant, the Commissioner who is alluded to in Mr. Montagu's evidence, is afterwards examined, as it should appear at his own request, for the purpose of explaining this affair. All that he does, however, is to cast imputations (of the justness of which, as the statement is purely *ex parte*, we can give no opinion) on the witness whom he committed, and to leave his own conduct as much without excuse as it was before.

Mr. Roots, Mr. Ellison, Mr. Clayton, and Mr. Glyn, are examined on the same subject; but their evidence goes only to confirm the popular objections against the whole of the present bankrupt system, and the proper view which the Lord Chancellor himself took of it a quarter of a century ago, when he said it was "as great a nuisance as any known in the land, and known to pass under the forms of its law."

While the Commissioners were on this subject, it seems a little extraordinary that they did not examine Mr. Impey, whose name has been so frequently before the public on the

subject of commitals, and the other members of this very celebrated 14th list.

The evidence of the solicitors and officers of the Court, which contain also some curious and useful information, must form the subject of future notice.

THE CHANCERY REPORT.

TIMES.—October 27, 1826.

The evidence of the attornies who practise in the Court of Chancery is, as might be expected, from the character of those persons, extremely useful in pointing out the details of the system. They do not pretend to give an opinion upon the general utility and expediency of the institution, because, perhaps, it has not occurred to them that these points are the subject of any doubt; but they afford, generally speaking, much information which is correct and useful. The practical inconveniences they perceive more immediately and nearly than any other persons connected with the Court of Chancery; and if they had spoken under less restraint than they seem to have felt, they would have done more towards enforcing the necessity of some remedy than any other of the witnesses. The evils in which the Court of Chancery abounds are remote and numerous; they lurk in so many and such odd places, that the attornies are much more likely to be acquainted with them than the multitude of counsellors which the commissioners examined. The ridiculous awe and reverence which the generality of solicitors feel towards judges and leading counsel has had its weight even upon the most intrepid of these witnesses; and although none of them spare the clerks in Court, or any of

the underlings, where mention is made of abuses, they cannot bring themselves to speak of the Lord Chancellor, or his delay, as freely in so august a presence as they do elsewhere.

Mr. Vizard, who has made public some of his opinions respecting the Court of Chancery, in the shape of a pamphlet, was examined by the Commissioners at great length. His complaint against the present system, in which the interference of clerks in court prevails, is that that interference occasions unnecessary expense and delay. The first he proves by showing, that the Six Clerks do nothing for the greater part of the fees with which they charge the suitors, and that what they do might be dispensed with; and he demonstrates the second point, by showing that they take, in some measure, the conduct of the suit from the solicitor who ought to have it, and thus impede his progress. The comparison which he makes between a suit at law and a suit in equity is a fair illustration of his opinion in this respect.

“ A solicitor, when he begins a Chancery suit, does not feel that he has it under his own control, and under his own management, as he has a suit at law; a suit at law he carries on without the necessity of any other person interfering with him; but here, according to the practice of the Court, there are delays which are continually thrown in his way by others, that tend to destroy that feeling which would otherwise carry him on with much more zeal, activity, and energy. If I commence a suit, if I serve a writ in a common law court, I file my declaration immediately, and in four days I am entitled to call for a plea. I begin with the thing as a thing I am immediately and constantly to work on; I find the delays, which I know must take place in getting in an answer, for instance, in the Court of Chancery, put the whole subject very much out of my mind, and I always find it inconvenient to take it up again, immediately, when the answer comes in, after a lapse of from six to twelve months; I consult my own convenience more in taking it up again, than I should have done, if I could have prosecuted it at once, without interruption and without delay. The same observation applies to all the stages of a suit: thus, if I am for the defendant, I have to prepare an answer; as the practice of the Court, in some cases, would allow of my taking nine months to file

that matter, I naturally make the preparation of it give way to more urgent calls. If I file a plea in the King's Bench, I can immediately rule the plaintiff to reply in four days. If I file an answer in Chancery, I cannot make the plaintiff move again for one month, when he may take a step, merely formal, and I am again summoned for some months more. If issue be joined in the King's Bench, in a term, I can try my cause at the sittings which commence on the day following the term. If I set down a cause for hearing in Chancery in a term, it stands appointed for the following term, but a much longer time elapses before it is actually heard. Thus, I have now causes which were set down in Easter term, 1821, before the Vice-Chancellor, which are not yet come into the paper for hearing, and cannot now be heard before November next. I am told, however, that the arrears are greater than heretofore, on account of the additional burden thrown on this branch of the Court, in consequence of the illness of the late Master of the Rolls. If my opponent, after his Honour has pronounced a decree, should choose to enter an appeal to the judgment of the Chancellor, I should consider my cause as again locked up for five years and upwards; for persons, whom I have been concerned, have been suspended as long. Petitions and interlocutory motions wait months for a hearing: but I am told, the illness of the late Master of the Rolls has also deprived the Chancellor of the benefit of his assistance on such days, and I may state also, that in the time of the present Chancellor, I believe many causes have been finally disposed of in motion, without the causes afterwards going to a hearing. If the Court of King's Bench make a rule, the attorney gets that rule on the evening of the day it was made, or on the following morning; if the Court of Chancery pronounce a decree, a solicitor waits many weeks before he can get the decree to proceed upon. In the King's Bench, references to the Master do not frequently occur, except for taxing costs; but there is no delay occasioned by the introduction of assistants, and no waiting for copies to be made for my opponent; I make out my bill of costs, deliver a copy to my opponent, appoint a time for the Master, and when I attend him the whole matter is disposed of. The delays before the Court itself may be unavoidable: it does not become me to enter into that question; but all these things taken together, naturally tend to produce in the mind of the solicitor a hopelessness of being able to arrive at any conclusion to his suit, and want of that active spirit which pervades all the proceedings at common law, although a regard to his own interest alone, in furthering the receipt of the heavy costs he incurs, must operate as a great spur to him for expedition."

It is obviously impracticable, for many reasons, to communicate to a Chancery suit the same velocity as can be

given to proceedings at law, but much may be done towards increasing the speed of Chancery proceedings, and the best way of effecting this seems to be by getting rid of that part of the machinery which is unnecessary and cumbersome.

The mode in which examinations of witnesses in Chancery is conducted, has always been objected to, not only on the score of the expense attending it, which is monstrous, but because it is not calculated to obtain such information as is necessary for the purposes of the suit. Mr. Vizard states, that the present method appears to him a very inefficient one, and gives the following explanations as the ground of that opinion:—

“A regular set of interrogatories are prepared beforehand, dressed up in such language that I have often found it exceedingly difficult to render them intelligible to the witness: those interrogatories are prepared, not to meet the evidence supposed to come from one witness, but a variety of witnesses, all speaking partially to the same point, though not precisely to the same; the necessary consequence is, that a witness has to be instructed by the solicitor so as to enable him to understand the question, and in part to adjust the answer he has to give; the witness is then examined without the presence of the solicitor, or any one representing the parties, or any one acquainted with the circumstances of the case, to see that all the information wanted is drawn forth; the necessary consequence of that is, that the witness either has simply to answer the interrogatories as they are read to him, or he must be instructed by the person examining him; in the one case, the risk is run of having an imperfect answer; in the other, it appears to me very improper that any person should be instructing a witness, particularly in the absence of the parties concerned.”

The other points in Mr. Vizard's evidence, and particularly that relating to the proceedings in the Master's office, having been already touched upon in noticing the contents of the report, and all that need be said on them is, that the evidence of the solicitors is in no respect at variance with the complaints made by every other person examined on this subject. Several other witnesses speak at greater length as to the examination of witnesses, particularly in

the country. Mr. Whetton, an old and very respectable practitioner, gives some minute and satisfactory evidence on this head. He is asked—

“ Within your experience, has there been any and what evil arising out of sending commissions into the country, either in point of expense, or in point of delay, or in point of execution?—As to all.

“ Will you state any thing that occurs to you upon those points?—It very frequently, I think, happens, that proper persons, or the most fit persons, are not selected to conduct the examination. There is a very serious expense incurred by a great number of persons being brought together, and not that despatch effected which would be most desirable in such circumstances, and of course that creates delay.

“ With reference to the most fit persons, do you think it would be useful that the commissioners should be barristers resident in the country, or that certain persons should be expressly nominated as general examiners in the country, by the Court?—Provincial counsel.

“ You think the provincial counsel would be the most eligible examiners?—I do.

“ Will you have the goodness to give your reason for that?—Because I think the provincial counsel will be found with professional talents, habits, and character, that will answer every purpose; and there cannot, as I conceive, be employment for fixed commissioners as examiners.

“ Do you not think that in many parts of the country there would be a difficulty in finding a sufficient number of barristers to execute the duty of commissioners?—I think there may; but I would then have a barrister as the chief commissioner.

“ Would not a barrister, as a quorum commissioner, generally answer the purpose?—Not so well as for all of them to be barristers; but if you cannot obtain three or two, I would take one.

“ With respect to the expense incurred in the execution of country commissions, would it not be useful by some general rule to limit it?—The great expense hitherto has been incurred in the feasting at the execution of the commission; and although you may limit that in costs, as between party and party, you cannot very well limit it as to the commissioners, unless, indeed, an allowance in money was substituted for refreshments to the commissioners and solicitors, as is generally done with witnesses.

“ You have said that another evil of a country commission is the want of despatch in it; would you suggest any rule to counteract that evil?—I think it would be remedied to a great degree by the appointment of such

commissioners as I have suggested, because I think their character and station will protect the parties. I presume that the commissioners will be paid proportionately to their situation, and therefore receive larger fees than commissioners hitherto have done; and I conceive that the parties will still be greatly benefitted by the manner in which their business will be done, and the despatch that will be afforded."

This is the more to the purpose, because on almost every other occasion Mr. Whitton seems very little disposed to find fault with the actual state of things. He sees no great delay, and not much mischief in what there is: he venerates the judges of the Court, honours the masters, bows to their clerks, and talks affectionately of the gentlemen in the Six Clerks' office. In short, he seems to be upon the best possible terms with all living creatures about the Court of Chancery, and says, as most likely the case is, that he has no complaint to make of any thing. Whatever may be the value that folks will attach to his opinions, there can be no doubt that they are expressed with perfect good humour to all men.

The evidence of Mr. Ralph Barnes, who has practised as a solicitor for the last 22 years in the city of Exeter, points out very satisfactorily the evils and inconvenience which attend the execution of country commissions, at many of which he has assisted in the character of Commissioner. This witness describes in a very intelligent manner, the course which is pursued with witnesses, and the objections which attach to it. The questions being put to the witness in the technical phraseology that belongs to Chancery proceedings, discussions frequently arise between the Commissioners themselves, as to the purport of the answers, which are sometimes carried so far as to render it advisable that the witness should quit the room until the Commissioners are agreed. The following extract from Mr. Barnes's evidence will show the inexpediency of the prevailing system of examining witnesses:—

"Has it appeared to you, from your experience of the execution of such commissions, that the mode now adopted is an effectual mode for eliciting truth :—It appears to me entirely deficient in that quality, because the interrogatory being put in a technical way, the witness, unless of a superior class, generally gives his answer in the words of the interrogatory, and frequently without apparently understanding its meaning. It appears to be quite deficient in cross examination, because the cross interrogatory is prepared before it is known what the witness has sworn in chief : and it is impossible, without knowing the words of the witness, and the manner in which his evidence is delivered, to put any effectual cross question.

"From the solicitor not knowing at all what evidence is given by the witnesses, has it occurred to you to observe that witnesses are frequently multiplied to the same point, after one has in truth proved the case :—As a solicitor cannot know what any witness will depose, he is always anxious to produce witnesses enough in support of his case, and frequently multiplies both the number of the witnesses and the interrogatories to which they are to be examined, unnecessarily.

"The Commissioners understand you to say, that the technical form of the interrogatory produces a different answer to what the witness means to give :—I mean to say that a form of words being presented to them, they may answer in that form of words, whereas, if the question was put in the first person to them, they would give their answer in their own words."

Mr. Barnes is asked by the Commissioners if to divest the questions of technicality, would be an improvement, and he replies "certainly, but I do not see the possibility of doing this effectually, unless the questions are discretionary at the moment;" and adds in another place, that owing to the manner in which questions are now put, and their inefficiency, cross-examinations are much less frequent than he should have supposed necessary for the justice of cases." The statement of the expense attending country commissions, as it appears, is really made with great forbearance.

"Is the execution of a commission in the country, ordinarily attended with a good deal of expense :—It is generally executed at a tavern, where the four commissioners and their clerks, and the solicitors and their clerks,

are living at the expense of the parties; and from that circumstance is attended with very considerable expense, beyond the necessary charge of the witnesses.

"Has each commissioner a clerk of his own?—Yes.

"How many commissioners generally attend?—Four, upon every commission I have attended.

"Do you consider four as absolutely necessary?—The law requires that there should be two, or more.

"Does the examination of a commission occupy much time, according to the present mode?—It occupies a great deal more time than the business when done appears to require.

"Are you aware of the manner in which the commissioners are paid?—They receive each two guineas a day, and each clerk 15s.

"Does that sum per day allowed to a commissioner, and allowed to his clerk, include his expenses whilst he is attending the commission?—Certainly not."

Mr. Barnes states that the great evils to the community arising from the present system of taking evidence is the want of publicity, and that applying to the parties in a suit is the inefficiency of the evidence when obtained, owing to the restricted and technical shape in which questions are necessarily put. The reason given in the answer to the following question must be perfectly satisfactory:—

"Does it occur to you from your experience that it would tend to the satisfaction of clients in the country, if a plan could be devised by which the examination into matters of fact went on in a more public manner?—I think it would tend greatly to their satisfaction; the great evil I feel as a solicitor is, that the party cannot become sufficiently acquainted with the state and merits of his case during its progress: and if in this main stage of the cause the merits were brought out in public, it would bring the party to a full knowledge of the case on both sides, and might frequently end in amicable compromise; at all events, it would be a source of satisfaction to the party, and enable him to conduct the case to an end according to his own wishes."

The evidence of this gentleman, which is highly useful to the object of the commission and honourable to his own professional knowledge, is closed by the following question and answer:—

"Supposing no other great alteration to be made in the mode of examining witnesses, do you conceive it would be an improvement if persons properly qualified were appointed in different parts of the country to act as the examiner *à la* London, indifferently, in taking evidence, instead of the commissioners named by the respective parties?—I think it would be a considerable improvement, by doing away the objection of the commissioners being named by the parties, and insuring competent skill for conducting the examination: for the commissioners are frequently called upon to decide upon the rules of evidence, where what the witness says is open to the objection of being hearsay, or matter of belief only, and on various other points of the law of evidence. But in obtaining one objection it would be open to another: the party would lose the benefit of a commissioner to protect his interest, whose local knowledge enables him to watch the witness. I think no mode of interrogation can effectually draw out the truth, but questions put successively upon the previous answers, and resting in the discretion either of a sworn competent examiner or of the advocate of the party: and as no such discretion can be safely trusted to be exercised in private, it follows that such examination ought to be public."

All the witnesses who have been examined on this point concur as to the insufficiency of examinations as they are now taken, and Mr. Plumer, the examiner, submitted a paper of suggestions for the improvement of the system, which he confirmed by his evidence. There is scarcely any subject within the range of the Commissioner's duty, that was more important, as to the practice of the court, than this. The inconveniences which are attached to it, although they are not very familiar to the public, are known and complained of by the members of the profession with great reason. Every one who has spoken or written on the Court of Chancery, has pointed out this as an object of necessary amendment. The Judges have, from time to time, admitted the evil, and regretted that they had no power to remove it. Lord Hardwicke and Lord Alvanley have expressed themselves very strongly respecting it, and the latter is reported to have said in the Rolls Court, "It is impossible to sit here any time without seeing, that a *rius vœce* exami-

nation of witnesses is much more satisfactory than depositions, where a possibility of doubt can be raised; and if ever a case required a *viva voce* examination, this is one." With the knowledge that this is the universal opinion of every one who has thought upon this subject, and after seeing how strong a case the witnesses of every description make on this particular point, it is difficult to imagine why the Commissioners have not thought proper to remedy defects so universally acknowledged. All, however, that they think fit to do is to recommend some insignificant alterations in the practice of the London examiners' offices, and some regulations respecting the expenses of country commissioners, which fall so far short of the evil, that they can hardly be felt in the way of relief.

THE CHANCERY REPORT.

TIMES.—*December 20, 1826.*

Among the attornies, who, from respect to the Court and the authorities, have omitted to speak out, Mr. James Lowe is not to be included. His evidence is given with so little restraint or forbearance, that it may reasonably be called excessively impudent, and if the manner in which it was delivered was as offensive as it seems to be on paper, the wonder is, that the Commissioners bore with him at all. Still it is useful, and points out some abuses, which if they had been stated in a more decent and becoming manner, would perhaps have had more attention at the hands of the Commissioners than they appear to have received. Mr. Lowe seems to be a kind of Cobbett in his way, and to think that talking big, and always about himself, is the way to ensure respect. He has been, it is said, for some years past,

the terror of the underlings of the Court of Chancery, whom he has frightened into such subjection and obedience, as makes him the envy of all less emphatic practitioners. The Lord Chancellor, who is always particularly civil to every one who bullies him, loads Mr. Lowe with marks of his consideration whenever the opportunity offers; and these successes seem to have inflated the gentleman's vanity to so immoderate a size, that he is beyond all endurance. His notions about the Court of Chancery are blundering and indistinct, but he possesses that knowledge, which a man must needs get in nearly half a century's practice, and even his effrontery is sometimes amusing. He sets out with saying, that he thinks the ancient practice of the Court was perfect, but that modern innovations have crept in, by which great delay and expense to the suitors are occasioned. It is impossible to tell what he means by the ancient practice of the Court, or to what particular period he refers, in speaking of a system of practise which, from its institution to the accession of the present Chancellor, was frequently altered and sometimes mended. As we guess, however, it is to the innovations of the Six Clerks that he particularly alludes, and if hating them be a virtue, then Mr. Lowe is a very worthy man, for he carries on the war against them *al cuchillo*. Scarcely a page occurs in which he does not say they ought to be utterly abolished; and if the sincerity of any part of his testimony can be doubted, it certainly is not this. He gives a romantic history of the origin of those functionaries, showing how they insinuated themselves into offices which did not belong to them; how they are by no means officers of the Court; how, after various changes, they are at present "upset;" and how Mr. Lowe thinks "that they do not know much of the business or course of the Court." He says plainly, that he thinks they are nuisances, and occasion a most unnecessary expense.

In one of the numbers of the *Spectator* there is an amusing account of the dissection of a beau's brain; Mr. Lowe's evidence is not a less curious exposition of the—what?—the heart, or the brain, or the conscience, if one might say so, of an aged London solicitor. In one place he says—"I never like any thing so much as to see a defendant's answer a good deal scratched out between the time of the engrossment and the swearing, because then I know where he is pinched with the questions put to him, and I find that exceptions will lie there if taken, or amendments be made with good effect." In another, talking of the practice of frequently amending bills, for which, as he very truly says, he has been much abused, he has this passage—"It frequently happens that it is necessary to *scrape the defendant's conscience* by continuing to amend the bill. I have amended a bill against one of the first merchants in the city of London three times in one of the plainest cases that ever was; for that I was very much abused; at last he could not evade the questions put to him, and paid my client the thousand pounds in dispute;" and Heaven knows that, to a man with whom money was not an object, it might be well worth his while to do so. What are £1,000. compared with having to answer three amended bills in Chancery.

The reason he gives for disapproving the suggestion that bills should be verified by affidavit, is of the same complexion:—

"Because a man never understands his case, until he sees what his opponent says: then he states many matters which were in his knowledge before, but which I should think it wholly immaterial to state in the first instance: we file very frequently (having a very good case) what is called a *fishing bill*; I should believe all the facts stated in such a bill to be true, because my client tells me so, and I have reason, from documents or otherwise, to believe it to be so: I put my client's case as I believe it to be, but subject to correction and amendment, if it afterwards turns out, upon seeing the defendant's answer, that there is a new case to be made."

Mr. Lowe's objections to the Examiner's Office are quite as strong as those of any other of the witnesses; but, with the extraordinary cunning, which is his strongest characteristic, he avoids a difficulty too great for him to cope with.

"Do you avoid going before the examiner whenever you can?—Certainly; and that is one of the reasons that I amend my bills; I get from the defendant, by answers, all the facts; the practice of the Court of Chancery is yet good, even badly as it may be administered just now by the inferior officers (not meaning to apply any thing I say to the higher officers of the Court, and I have done every thing I can to prevent any thing of that kind.) I look upon it, that in the practice, even as at present administered, injustice seldom prevails in the Court of Chancery; if a solicitor knows what he is about, he makes a defendant at last tell the truth.

"Are the examinations well taken by the examiner, when they are taken?—I have not an opportunity of knowing perfectly, and I had rather not give an opinion. I am a man of great business, and am obliged to do my business by gentlemen in my office. At this time I can only state the case of 'Brown v. Tastet,' and an instance of impertinence being struck out of an examination of a witness in a cause 'Cooke v. Hentey;' and I do not know how to get the costs of that impertinence paid, without vexing the examiner: it was in my office, but I had not much to do with it myself, I, however, believe the depositions are shockingly taken.

"What ground have you for believing that?—I avoid the offence if I can; I know the time when it was like making affidavits. I think it is a terrible way of taking them now.

"Have you heard much complaint of it among solicitors?—I am not much in the habit of conversing with solicitors."

A good deal of the merit which Mr. Lowe means to claim for himself in the last answer (and from which we do not wish to detract) depends upon its being optional or of necessity with him. He disapproves of the Examiner's Office altogether, and doubts the utility of examining witnesses at all. Upon this occasion he relates another anecdote, which, as he thinks, tells very much in his favour. The Commissioners ask—

"Is it not beneficial, for the purpose of perpetuating the testimony of those witnesses?—I should think not myself; because when a man is dead,

his hand-writing is probably much better evidence than he himself would have been, if he had been alive. I remember a cause I tried at Lancaster, which lasted two days. It was on a will made in Ireland; Messrs. Watkins and Cowper, of Stone-buildings, very ingenious men, were solicitors on the other side. An issue was directed as to the validity of the will; they went on and examined their Irish witnesses; I joined in the commission, and prepared as if I intended to meet them in Ireland, but my commissioners did not attend; they therefore examined their witnesses *ex parte*; the depositions were published, and before the cause was tried I got a copy of their depositions, and met them at Lancaster assizes in a way in which I never could have met them, if I had not known what they meant to prove: and we got a verdict in two days, and set aside this Irish will. It really does mischief examining witnesses either in good or bad causes of that nature. I consider that I got that estate very honestly for my clients, but still by my own ingenuity."

This gentleman's enmity against all the officers of the Court makes him sometimes a good witness for the purposes of the inquiry; and what he states respecting the practice of the Registrars is more to the purpose than any other evidence in the Report:—

"After a decree or order has been pronounced, do you find any inconvenient delay in obtaining either decree or order from the registrar?—It is impossible to get it without being on good terms with him; and when we are, it is very badly drawn up. The registrars appear to me to have now lost the talent of drawing up decrees.

"There is much inconvenience in obtaining the decree or order?—No doubt about it.

"What do you mean by being on good terms with the registrar?—Taking office copies.

"Is that found to cement the friendship of the registrar and the solicitor?—So much so, that in a case in which a client of mine was interested, 'Robson against Cameron,' heard at the Rolls, the bill was filed on the 14th of April, 1823, the answer was put in the next day, the decree followed on the 21st of the same month, and then, in a very short time, the decree was passed, entered, and in the Master's office, as I believe. Such expedition can only be obtained by favourites.

"Is it not, in point of fact, customary to ask for office copies of the decree, for the express purpose of obtaining the minutes?—That depends entirely upon the party: there are various ways of getting civility; one

may get it for money, another by favour, and another from fear : if I go and ask for a thing, I very frequently have it. I am pretty liberal in taking office copies too ; I seldom find any difficulty in that way ; I do not profess to take an office copy to expedite my business.

" But, in point of fact, you take office copies :—I do.

" Do you ever take them when they are not wanted ?—They are never wanted ; it is quite idle to think that an office copy is wanted ; I speak generally.

" Are there not positive orders of the Court against the registrars requiring any parties to take them ?—I do not know what those orders may be ; I do not pay much attention to that order ; I have read the orders of the Court.

" Is the order of Lord Hardwicke, which declares that the registrars are not entitled to be paid for copies, unless such copies are required by the parties, observed or not in the registrar's office ?—They are always required by the parties.

" Are they required by the parties, in consequence of the difficulty which the parties would have in obtaining orders or decrees ?—No, I do not think they are, for the reason I have given. We are in the habit at Rome of doing as they do at Rome ; we know that we must in some measure take those copies, though they are wholly needless.

" Do you think that a decree would take a longer time in being delivered out, if the parties were resolutely to refuse to take those copies ?—It would be quicker, of course, because there would be less time occupied in writing the copies.

" Are not the copies now taken for the purpose of conferring a benefit upon the registrar :—Entirely so ; nothing else.

" Do the registrars expect the parties to take those copies ?—They do not take money, but the office copy is the registrar's hood.

" Does not a very considerable and unnecessary time frequently elapse between the making of the order or decree, and the carrying it into the Master's office ?—Only what is occasioned by the registrar's delay."

There are some odd sayings in different parts of this solicitor's evidence, which have a curious effect on paper, and which he probably meant to be very striking. For example, he says he never drew a bill, the contents of which he was not ready to swear to, and that Mr. Shaddick was a good clerk in Court when he was a lunatic, and several similar assertions, which may be true enough, but which never-

the less do not prove any thing relative to the matter in question. A certain aptitude at swearing may be a matter of taste, or of constitution, and from what Mr. Lowe says of the Clerk in Court, a lunatic would do just as well as another.

The evidence of Mr. Forster is of a totally different character. This gentleman, who has retired for the last ten years, from perhaps the best and most extensive practice in London, appears to possess all the qualifications necessary to make his depositions valuable. With a perfect knowledge of all that belongs to his professional duties, his mind is cultivated, and his habits of thinking refined and enlarged. He is quite aware of the numerous evils which abound in the Court of Chancery, very earnest in his endeavours to remedy them, and points out very clearly the means by which he thinks the amelioration ought to be effected. He does all this, however, in a manner very different from the coarse and bullying tone which Mr. Lowe has adopted, and, excepting for the purpose of contrast, there is no reason why these two gentlemen should be mentioned together. In speaking of the Six Clerks, of whose uselessness, as they are at present constituted, Mr. Forster has no doubt, he says, this opinion is concurred in by all the professional men of any note with whom he has conversed. The following question and answer then occur :—

“ With reference to the Six Clerks ; did the gentlemen you mention concur with you in the propriety of their abolition as officers of the Court ? —Yes ; but I think the word abolition is of too wide an extent as applied to them, because to abolish their situation is quite unnecessary, and certainly would be a very unbecoming proposition on our part ; all that we desire is, that the solicitors may be at liberty to practise without their intervention, leaving them all their character of solicitors and clerks in Court : and they would have great business independently of that proposed to be withdrawn, because many country solicitors, and, probably, many remotely resident town solicitors, would choose to employ them in preference as their agents.”

Notwithstanding that Mr. Forster's evidence is given in a courteous and gentlemanly manner, it does not evince the least disposition to soften down or shrink from any of the really objectionable parts of the system. The length of pleadings, the system of pleading, the practice in the different offices, and particularly in those of the Masters, and the manner of taking evidence, are commented upon with the greatest fairness. The documents which Mr. Forster furnished the Commissioners with on the subjects of evidence, an Infants' Court, a Charity Court, Bankruptcy and Lunacy, and which are printed in the appendix C., are among the most valuable papers belonging to the Report. With the following extract from one of the questions, and the answer to it, in which Mr. Forster expresses his opinion of the effect of Chancery suits, as the Court is now constituted, we close the notice of his evidence:—

“In the present state of the procedure of the Court of Chancery, do you think that the conduct of a Chancery suit is a very desirable thing, as a matter of business, for a respectable solicitor?—I have stated my opinion, but I repeat it. In the case of an adverse suit, where all the tricks of delay that a man can avail himself of by the habits and practice of the Court, are to be expected, I for one should have infinitely rather declined than have undertaken such a suit; I have, on the part of a complainant, in many instances advised the submission to a disadvantageous compromise, and even the entire abandonment of a well-founded claim, rather than attempt such a vain pursuit.”

“A great deal of the business of the Court, and the chief part done by the present house of my name, chiefly consists of proceedings in the Court of Chancery of an amicable nature; family concerns, in which the circumstances I have described do not exist. In these cases proceedings may be conducted with great expedition by consent, but, I must add, with lamentable expense. For great estates and great fortunes there is no security so good, and no trustee so safe, as the Court of Chancery, but to little fortunes it is ruin. There is a great difference in the different species of business that come under the cognizance of the Court.”

Mr. Leake, the member for Malmesbury, has also given very satisfactory evidence, and has furnished the Commis-

sioners with dissected bills of costs, in which the payments to different officers of the Court are marked, and by which it appears that the greater part of the expense in Chancery suits is occasioned by the enormous amount of those payments—a fact which cannot be too generally understood, when the question of reducing the expense at which justice is administered to the public is discussed.

THE CHANCERY REPORT.

TIMES.—*December 27, 1826.*

The only remaining division of evidence under this commission which remains to be noticed, is that furnished by the officers of the Court of Chancery: among these, that of Mr. Vesey appears the most remarkable. He is the only one of the Six Clerks whom the Commissioners thought fit to examine; and the account he gives of the duties which he and his colleagues perform for the large emoluments they receive, is extremely ludicrous. He says, that the duties consist in filing the records, entering them, certifying to the Court respecting them, signing copies, and preserving the records. Now, for the discharge of these functions each of the clerks receives £885. a year, which Mr. Vesey mentions, besides other emoluments that he only hints at. The general opinion is, that the office of Six Clerk is worth £2,000. a year, and if this be any thing like the truth, the witness has failed in candour, to say the least. But if he only receives £885. a year for these laborious duties, most people will think he and his partners are pretty well remunerated; and when it is remembered that a few years ago their care of the records was so great that a considerable quantity of the documents in their custody was stolen and sold for waste paper, and when the

Court has held that they are not responsible for the correctness of the copies which they sign and take fees upon, they will feel disappointed that the Commissioners have not done something towards ridding the suitors of such useless and expensive personages. The pains which Mr. Vesey takes to make what he calls the duties of his office appear very important are truly pitiable, but the fairest way of showing this seems to be by extracting his own words. The Commissioners ask whether it is not necessary that officers should be employed in whom the Court can repose confidence; he replies "certainly," and the examination then proceeds as follows:—

"Have the goodness to say on what principle or in what manner those duties are distributed among the six clerks?—They divide them two months in the year to each: each clerk takes two months in the year for constant attendance daily during office hours.

"The whole duty is done by that clerk during the two months of his attendance:—It is

"Each clerk has but two months' occupation in the year:—But two months regular attendance; but the six clerks meet always in term frequently, for any occasional business that may arise; and when there is a press of business, they assist each other: frequently the whole of the business cannot be got through in one day.

"Of what nature is that occasional business which requires their meeting together?—Frequently they have to consider questions of practice that arise in the course of the duty above stairs, where the six clerk in attendance wishes not to be responsible for any question which arises without consultation with the others.

"How can any question arise on matters so simple as those you have stated:—They are not entirely of that simple nature: there sometimes arises a good deal of difficulty, particularly with respect to answers, with respect to the propriety of the jurat, the propriety of the engrossment, the manner in which it is engrossed: we have been frequently pressed to file bills and answers which it is thought are not engrossed in a proper manner.

"Are not those questions all of very easy solution, and such as any one man of tolerable experience may decide for himself?—Yes, that as to the engrossment, the parchment, and the manner in which the pleading is

engrossed, certainly; but there are several other questions which may arise, which I cannot specify particularly at this instant.

"Have the goodness to state any one case of difficulty which, in your recollection, has required the deliberation of the whole body of clerks?—I cannot immediately state an instance; but questions have frequently arisen, upon which we have had very considerable doubt."

It is difficult to imagine what can be the instances of considerable doubt which occur so frequently, and which yet Mr. Vesey is unable to state; but such is the fact he has deposed to before the Commissioners. He afterwards, at the close of his examination, and when, as we suppose, he had had time for research, discovers that between 1814 and the period of his examination, some instances, in all about ten, had occurred in which pleadings had been rejected, or taken off the file, for some technical inaccuracy in the heading of them. So intense is his application to the duties of his office, that even, for this information, he is indebted to "the principal clerk in the office, Mr. Roberts," who, it seems, drew up the paper from which Mr. Vesey made this statement to the Commissioners.

Until we arrived at the evidence of Mr. Vesey, we felt some surprise, that for the sake of decency, and to keep up an appearance, if nothing else, of fair dealing, the Commissioners had not thought fit to examine some other of the persons who hold useless and lucrative offices about the Court of Chancery. An inquiry into the causes of delay and expense could hardly seem to be conducted without evidence so germane to the matter as this; but when we find the way in which this flower of the Six Clerks, the very pet of the place-men, breaks down under their hands, we wonder no longer that he was their first and last witness of that class.

But for this untoward accident, we might perhaps have had some information respecting the Cursitor's office, where 24

persons hold places which produce to them between £200. and £1,200. a year, and which they discharge by deputy in the very teeth of an article of their charter which forbids their doing so. We might have learned something, also, respecting the number and emolument of the appointments in the gift of the Lord Chancellor, the persons upon whom they have been bestowed, and the duties which belong to those appointments. The public would then have been enabled to form a correct judgment as to the cause of some of the evils they complain of; the King might have had it at his option, at least, whether he would keep up such a set of officers, and the Commissioners would have obeyed (as now they have neglected) that part of his commission which directed them to inquire into "the means by which the expense attending the proceedings in Chancery could be abridged usefully to the suitors."

The Commissioners have examined some persons who hold offices in the Court of Chancery, but they have been careful in selecting (with the single exception of Mr. Vesey) such of them as really do some work for the fees which they receive. They examine deputy-registrars, but not the principals; and the questions are shaped so as to show that the former have very laborious duties to perform, for which their remuneration is not more than sufficient. They examine also the secretaries in lunacy and in bankruptcy, and the result appears to be the same, but accompanied with a statement of the patience and labour which the Lord Chancellor bestows upon the papers he takes home with him to read—a statement which we should be the more inclined to believe if we saw any proof of it in the despatch of business.

The Masters' Clerks are also examined, but as they are an extremely industrious and not overpaid set of persons, and as, although one of the main causes of expense and delay is in the department to which they belong, they

neither produce, nor profit by them to any considerable extent, they are safe witnesses.

It has been estimated, that the emoluments of the various places belonging to the Courts of Equity amount to between £200,000. and £300,000. a year. This calculation is of necessity below the real amount, because it proceeds only upon such particulars as could be obtained from public sources. The places themselves cannot in strictness be called sinecures, for all the officers have some ostensible duties to perform: they do not present themselves to the public in the most odious shape, because they are paid for, not out of the public revenues, but out of the pockets of the suitors in the Court. If, however, the duties performed are unnecessary, and a greater number of persons are employed than need be, and their emoluments are extravagant beyond all reason, ought these facts not to be laid before the Legislature and the country? The answer is obvious; and yet from the beginning to the end of the Commission no inquiry has been made into this important subject. Already it has appeared by a return made to the House of Commons, that the Lord Chancellor has given to one of his near relatives the possession or reversion of six different places in the Court of Chancery, the annual income from which is about £9,000. a year. What other similar offices there may be, it will be impossible to ascertain, until some other means shall be adopted than the appointment of a Commission like this; and yet without this information, and a great deal more which the Commissioners might have obtained, and either would not or dare not, no adequate amelioration can be expected.

The experience of preceding Commissions had taught us pretty nearly, what was to be expected from that on the Court of Chancery. The notorious fee committee contrived, at the same time that it afforded some information, to mislead and baffle the attempts at redress and relief which

were to be made through its means, and even the very object it was to be seen that the Chancery Commission was of the same complexion. The manner in which it was appointed, the persons composing it, and the course of its first proceedings, were bad omens of its result. A more incongruous batch of Commissioners was hardly ever put together. The Lord Chancellor and Lord Redesdale, and perhaps the late Master of the Rolls, might agree tolerably well; but the Vice Chancellor hates (not without reason) the first, and does not care for the other two. The Master of the Rolls knew nothing about the matter, and none of the four can be supposed to be very willing to aid the purposes of the inquiry. Sir Charles Wetherell was too indolent, Master Cox and Mr. Hart too busy to attend the meetings of the commission very earnestly. Dr. Lushington knew nothing about the Court of Chancery, and saw that he should be overmatched by his colleagues if he proposed any of the amendments which common sense would prompt; Mr. Littleton was made a Judge; Master Courtenay employed himself only about what concerned the Masters' offices, and in this respect was extremely useful; and of the four other barristers, two, Messrs. Merivale and Beames, acted only as secretaries to the Commission, and were employed to frame the Report, and the explanatory papers. But if the Commissioners had been better chosen and better disposed than we believe them to have been, still the Report must have been unsatisfactory. It is not possible that men engaged in other duties, of themselves sufficiently burdensome, would be able or willing to devote as much time as was necessary to the task which the Commission prescribed. Mr. Beames and Mr. Merivale are daily employed in pleading before the Judges of the Court of Chancery; and if they found themselves strong enough in the Committee to propose measures, and to support them by arguments which must have been extremely unpalatable to those Judges, (and

nothing short of this was it their duty to do,) then they must possess qualities which (without meaning any disrespect) we have not been able to attribute to them, and which would make them exceptions from the whole human race.

The result of a Commission constituted as this has been is before the public. The influence of the Lord Chancellor breathes through every line of it. The evils of the Court of Chancery are palliated or concealed. Remedies are proposed which have no useful operation, or are impracticable, and information is given to such an extent and in such a manner only as may prevent or elude future inquiry. In short, no one thing is proposed which can in a material degree remedy the inconveniences and distress occasioned by the Court of Chancery as it now exists, or quiet the well-grounded complaints which are uttered throughout the kingdom. It is impossible to refer this failure to any but one cause—that of the overpowering authority of Lord Eldon, and that determination which, with the obstinacy and short-sightedness of senility, he has formed to resist every attempt at improvement. “But,” in the words of a modern writer on this subject (Mr. Miller), “there is every prospect that this state of things will not long continue. It is almost impossible that Lord Eldon’s opinions can accord with those of his colleagues, to the wisdom of whose policy they are in such direct and manifest opposition; and the Government will at length see the indispensable necessity of no longer permitting the obstinacy or procrastination of one man to stand in the way of the wants and wishes of a whole people. The fountains of inquiry and discussion have been opened up: the streams of information which they are sending forth are augmenting and collecting; and whether he resigns his office or retains it, he must either yield to the current, or, with all his doubts and difficulties, he will find himself carried away before it.”

We believe that the time has come in which this question between "the wants and wishes of a whole people" and Lord Eldon is to be tried. The last Session closed without any debate on this Report, but it must be early and earnestly discussed in the present one. The manner in which the inquiry has been conducted, instead of stilling the public clamour, will have the effect of convincing all men of the necessity of a reformation in many branches of our jurisprudence. The period in which a superstitious affection for the forms of antiquity prevailed, is passing away, and although the progress of reform will commence, we trust that it will not terminate in the Court of Chancery. The system relating to real property is that which next requires the attention of the Legislature, and while we concur in the truth of the picture of the state of our laws, which has been drawn by the eloquent author of *The History of the Middle Ages*, we express a sincere hope that his prediction may be verified.

"Deterred by an interested clamour against innovation from abrogating what is useless, simplifying what is complex, or determining what is doubtful, and always more inclined to stave off an immediate difficulty by some patchwork scheme of modifications and suspensions, than to consult for posterity in the comprehensive spirit of legal philosophy, we accumulate statute upon statute, and precedent upon precedent, till no industry can acquire, nor any intellect can adjust, the mass of learning that grows upon the panting student; and our jurisprudence seems now more likely to be simplified in the worst and least honourable manner—a tacit agreement of ignorance among its professors. Much, indeed, has already gone into desuetude within the last century, and is known only as an occult science by a small number of adepts. We are thus gradually approaching the crisis of a necessary reformation, when our laws, like those of Rome, must be cast into the crucible. It would be a disgrace to the nineteenth century if England could not find her Tribonian."

THE CHANCERY REPORT.

TO THE EDITOR OF THE TIMES.

TIMES.—*December 27, 1826.*

Sir,

The public owe you much for the observations you have already made respecting the mode of proceeding in the Court of Chancery, and the delay and useless expense thereof; and particularly the conduct of the Chancellor in tantalizing the suitors with repeated promises of giving his judgment,—often, however, needlessly delayed year after year. Of the cruelty and injustice of this, I think the public are now well satisfied; though it would appear that it were useless to hope, during the present Chancellor's time, for any amendment. I wish, however, to call your attention to two points which appear to have escaped your notice; or, if you have adverted to them, it has escaped my notice. I mean, first, the great and irremediable injustice which would result to parties whose cases are now waiting for judgment, should the present Chancellor die; in which case, all the expense of rehearing the causes before his successor would be increased. I believe if any member of the House of Commons would take the trouble to call for a return of causes, petitions, &c., now standing for judgment, he and the public would find that hundreds of persons are interested in suits now pending, which are only waiting for judgment, and that property to the amount of more than a million is waiting only for the Chancellor's making up his mind.

The next point is one also of serious importance—namely, the class of persons who have recently been appointed to fulfil the office of Masters in Chancery, one of the greatest responsibility, and one which more especially requires ex-

perience and familiar conversancy with the detail of the practice of the Court. With more than 20 persons at the Chancery bar, who have practised there from 20 to 30 years, two persons have recently been appointed, whose faces were scarcely known in the Court,—one a gentleman who was an officer in the militia, and who, within these last few years, occasionally attended at our bar; but, although myself a pretty constant attendant, I will venture to say was not engaged in ten causes of importance in his life. This is the present Master Cross, who now daily decides on points of practice between suitors. The other gentleman I allude to is the Honourable Mr. Eden, the eldest son of Lord Henley, and the brother-in-law of Mr. Peel. The latter gentleman has been employed in the compilation of some useful treatises, and finally was, it is said, commissioned by the Chancellor to prepare the new Bankrupt Act, which has already given rise to much litigation and difficulty; so much so, that Mr. Montagu considers its passing as a very valuable source of increase in his professional labours. Now surely it would have been but justice to the public, to have selected persons at least conversant with the practice of the Court; and without business and experience, no one can be fit to hold such offices. Master Cross is known to be a great personal friend of the Chancellor, but has he not enough sinecures to bestow on his followers, without saddling them on the public, and thrusting them into offices of great trust and responsibility? In the foregoing observations, I beg to observe, that nothing disrespectful to the persons appointed is meant. The case once stated, (and I defy contradiction,) it must be obvious that no talents can for the next ten years make them fit for their office.

Temple.

A. B.

No. 7.—Page 381.

Extract from the Report of the Commons Committee on Temporary Laws, Expired or Expiring.

Dated May 12, 1796.

Re-printed Commons' Reports, vol. xiv., p. 36.

In the first place, it appears to your committee, that there is no authentic and entire publication of the statutes; that a very considerable number of statutes, as well as clauses and sentences of statutes, which are upon the original rolls, never have been printed at all; that many, which are printed as statutes, do not exist upon record; or have not properly the form or force of statutes; and that the statute law has through a series of six centuries, accumulated at length to a most voluminous mass, which is rapidly increasing, and has been more than doubled in bulk within the last fifty years: that without presuming to question the policy of the statute law in any of its branches, your committee cannot but observe, the matter of it to be in many places discordant, in other places obsolete, in others perplexed by its miscellaneous composition of incongruities; and that its style is for the most part verbose, tautologous, and obscure; all of which circumstances seem to have engaged the attention of parliament at successive periods, but not to have produced any improvement, in the degree which their importance demands.

Your committee cannot in this place abstain from submitting to the house, as the result of their observations upon this investigation, the extreme importance of obtaining a complete and authentic publication of the statutes; and that, in their opinion, the surest method of proceeding at present to obtain it, would be by extracting them from the

parliament rolls (printed a few years ago, in six volumes, folio, by order of the king, upon the address of both houses of parliament, and to which an index and glossary remain to be added); completing them also from the statute rolls at the tower, the chapter house, and the parliament office, so far as these two distinct sets of records continue to run in a parallel series. From thence the statute rolls in the parliament office are the only records which are strictly original, and they should be transcribed or collated throughout: the portion of this work would, however, be the less difficult, the public acts having already been printed from the statute roll, by the king's printer in modern times and a regular series of them from 1 Will. III, being preserved in the custody of your officers.

With such a complete publication of the statute law, when provided, the plan for a revision might not be difficult to devise, however laborious in its execution. Adopting the idea of the commissioners employed in the reign of James the first,* but executing it more comprehensively, an examination might be instituted, and a report made of all the laws; enumerating them chronologically, and noticing against each individually; either, 1, an existing perpetual law; and whether fit to stand, or be repealed simpliciter, or to be repealed and replaced by a new law; or, 2, an existing, but expiring law, and whether fit to expire, or to be continued, or to be made perpetual: or, 3, repealed, and whether fit to be re-enacted; or, 4, expired, and whether fit to be revived.

The detail of such a work might be distributed as lord keeper Bacon proposed to Queen Elizabeth,† by divisions between different sets of persons; whose labours might proceed concurrently, and be afterwards submitted to the judgment of a superior commission, as lord chancellor Bacon proposed to James the first, to be appointed for the purpose

* Harleian MSS. n. 244. † Ibid. n. 249.1.

of preparing a digested result of the whole matter for parliamentary consideration.

In the recompiling of past laws, or the enactment of future laws, it becomes indispensibly necessary to introduce a methodical order of distribution, and a precision and conciseness of style, to which it would be often of singular utility to add the prescribed forms of proceeding by way of schedule; (such for instance, as are subjoined to the general highway acts, 13 Geo. III., c. 78, 84; and the act for rebuilding parsonages, 17 Geo. III., c. 53:) wherever summary jurisdiction is given to inferior magistrates, in the discharge of their multifarious and difficult duties, it is equally expedient to provide these means of facilitating the execution of the laws for the ease of the magistrate, and in many cases also for the benefit of the public revenue, and in all instances, for the safety or convenience of individuals.



No. 8.—Preface, p. xv.

Substance of three Parliamentary Reports, on Civil and Criminal Justice in the West Indies, as relates to the Colonial Courts of Chancery.

Dated May 16, 1825; March 6, 1826; October 5, 1826.

BARBADOES.

The Court of Chancery, in Barbadoes, is composed of the governor or president, with four or more members of the council. The governor sitting as chancellor, or rather *primus inter pares*, has no assessor or professional assistance of any kind. The decision is made by a majority of voices, in open court, each vote being taken singly, beginning with the junior member of the council. Members of the council-

have often joined the court just before a decree, who were not present when a cause was opened; and some occasionally quit before a determination. In one cause the governor and five of the council sat: three were of one opinion and three of another, and, as the same members did not attend again, no decree was made, until the suit abated by the death of the parties, and was not revived. The judges of this court are supposed to have all the authority of the Lord Chancellor of England, and the practice professes to conform to that of the English court, except where it is altered by local laws, or special orders of their own. There are about a hundred rules, prescribed by the court itself, written in a book kept by the registrar, often not at all known to persons practising in the profession. The early orders are frequently, as might be expected, rude and uncouth, some very obscure, and others ludicrous: the latter rules as far as they go, are generally wise and useful.

It was a theme of universal complaint that the expences of this court were *intolerable*. The costs do appear shameful and oppressive.

The judges of the court never have before them, and never take home, any papers, so that they affect to remember, accurately, a detail of important facts which required four hours and a half to read; and in most cases after hearing counsel, decide immediately!

The cases cited were numerous, involving nice points, and turning upon subtle distinctions; a little, it is to be feared, beyond the comprehension of the best informed country gentleman, not qualified by previous education and habits, for the discharge of judicial duties. The governor candidly stated his regret that it was part of his duty to act as chancellor; it being the most disagreeable part of his office. None of the present members of the council, except Mr. Beccles, son of the attorney general, have received a regular

legal education, or have been admitted to the bar. Mr. Lucas the chief judge of the island, was a surgeon by profession. All the members of the council, with the exception of the governor, are gentlemen of considerable estates in the colony, and of the first respectability; but besides possessing property in their own rights, some of them are attorneys of estates, on behalf of absent proprietors. One of them is a clergyman. By means of the various duties and relations, thus created; by social intercourse, by nativity, marriage, or otherwise; they are all intimately connected with the members of the colonial society in which they live. Bryan Edwards says, that when a similar composition of the court of Chancery was proposed in the island of St. Christopher, "the attempt met with decided opposition, on the ground of "the inconveniency of having on the chancery bench, judges, "some of whom it is probable, from their situation and connections may be interested in the event of every suit, that "may come before them."

The body, of which the court is composed, being in its nature fluctuating, and attendance uncertain and irregular, the members of this court cannot always be the same; hence proceedings in the same cause may be inconveniently discussed before different judges, and judges may decide, who have not heard the evidence or pleading. The want of legal education exposes them to continual errors, occasions a want of confidence in their decisions, and is the cause of great expense, vexation, and in some instances delay. Irregularity, uncertainty, and expense, were generally charged as affecting the whole of the proceedings.

TOBAGO.

The original constitution of the Court of Chancery in Tobago does not appear: it is stated to have been *revived*

shortly after the capture of the colony, by an act passed in February, 1794. The governor is sole chancellor, and is supposed to possess all the authority of the Lord Chancellor of England. On sales of estates under foreclosure or decree for the payment of creditors, the master has an enormous fee of *six* per cent. on the gross amount, and he gets a fee on his report of sale or no sale. Both the chief justice and the attorney general admitted to the commissioners that this was "*too much*," and the former said "*two per cent.* would be sufficient!"

The chief justice admitted that the decisions of this court were complained of, that a professional chancellor was desirable; and the attorney general allowed that it was quite impossible to say, whether the judgments of the court are consistent with each other or not, as the bar can never form any opinion of the grounds on which they rest, no *ratio decidendi* ever being given.

The Commissioners, though satisfied of the honour and intelligence of Sir Frederick Robinson, mention with regret his extreme liability to be wrong, owing to his want of judicial habits and his vague notions of equity. They mention a general persuasion in this island, that an improvement in the judicature was quite essential; that it would be speedily afforded; and would begin where it was most wanted, in the Court of Chancery. Great irregularities were objected to the present system; much was said of "erroneous decisions," of "bills dismissed before answer," "demurrers over-ruled without argument," "sequestrations issued in the first instance," "orders in a cause without a bill filed," "sales directed of property belonging to parties not before the court," &c. &c. All deplored the want of "a regular-bred lawyer to preside in the Court of Chancery." Great disorder and confusion prevailed; no man felt himself secure; and injustice was often practised, without being intended, or even dreamt of. Expense in law

proceedings was the subject of constant and vehement remonstrance; but the report states that the Commissioners could not procure any bill of costs for business done in the Court of Chancery, to which the complaints chiefly referred.

GRENADA.

The Court of Chancery in this island, derives its authority from the King's proclamation in 1763, and the governor's commission. The governor sits alone as chancellor, with authority similar to that of the sole chancellors in the other islands. The laws and rules are the same as in England, excepting some few alterations and additions made by colonial acts and court rules. The master is allowed two and a half per cent. on receipt, and the same per centage on payment of monies! The colonial master in Chancery, in his communications to the Commissioners, says, "I acted as secretary to General Maitland, to General Ainslie, to General Shipley, and also to President Harvey. I can take upon me to state, that the duties of the office of chancellor have been complained of by them all, as most irksome. I have seen General Maitland with a large table of books before him, taking great pains and getting deep in difficulties," &c. In the view of the attorney general "it would be very desirable to have a professional gentleman as chancellor, if he could be permanently resident." On one occasion the chief justice and attorney general united in representing the extreme inconvenience and dissatisfaction which resulted to the suitor, from the administration of equity being intrusted to the *commander-in-chief* of the colony, who is from education incompetent to perform the important duties imposed upon and exacted from him."

The Commissioners state that the most serious and well-founded subject of complaint in this island, is the expense of all law proceedings, and particularly in the Court of Chancery where fees are exorbitant and costs excessive.

The colonial master in Chancery in this island does not give security for the due performance of the duties of his office.

The Commissioners notice the impropriety of persons filling judicial situations, being also members of the legislature ; it preventing enquiry into their official conduct, and affording opportunities of gratifying on the Bench their personal animosities, conceived from opposition and conflict in the Assembly.

ST. VINCENT.

The Court of Chancery in this island derives its authority from his late Majesty's proclamation in 1763, and the governor's commission and instructions. The governor is sole chancellor, and the practice of the English chancery prevails. The governor admitted the want of a lawyer to preside in the court. The chief justice stated that he had not heard of the filing of any bill, or the making of a single motion, in this court for two years last past. This island appears to be the "happy island," as the commissioners state that there were no complaints of a general nature, except from the lawyers, of the paucity of suits !

DOMINICA.

The Dominica Court of Chancery, as at present constituted, was established by an act of the island, No. 14, Laws of Dominica. It is composed, as at Barbadoes, of

the Governor, associated with the members of the council; *three* of whom, together with the commander in chief, are necessary to form a court. They are then supposed to have the same jurisdiction as the High Court of Chancery in England, and are governed, in their proceedings, by the practice of the English Courts, and manuscript rules of their own. The court has been employed "but scantily," with the ordinary business of a court of Equity.—Fees and costs, here as in the other colonies, are EXORBITANT, and the chief justice observed "*positively render the court almost inaccessible.*" There is no table of fees, except for the officers of the court. Bills are not delivered to the party, but to the adverse solicitor, and are rarely taxed. Appeals lie to his Majesty in council, on the usual terms, of the appellant giving bond in £500., with two sureties, conditioned to prosecute the appeal within a year and a day, which bond is lodged in Chancery. The chief justice conceived there was no restriction from appealing from *all* interlocutory orders, as well as final decrees. The court below decides on "the appealability of the matter." The effect of an appeal is, it was said, to put a complete stop to all proceedings in the colonial chancery.

The chief justice considers—"the best improvement which could be made in this Court to be,—

1st. "To make the governor *sole* chancellor, and to give him an assessor, or legal and equitable man, with a suitable salary.—2nd. To have the fees of all concerned, reduced to a moderate standard, to encourage suitors to seek relief, and particularly the poor and oppressed legates, and others claiming under wills and testaments; so to make the master's commission on sales or final decrees more moderate. And lastly to abolish the serjeant-at-arms, as a useless officer."

The answer of the Attorney-General, to the same ques-

tion of the Commissioners, is too manly and sensible, to be either omitted or retrenched.

“ The present constitution of this court (the governor associated with the members of council) is wholly inadequate in my apprehension, to the due and proper administration of the law. The governor who is mostly of the military or naval profession, cannot be expected to be possessed either of the habits or the knowledge to qualify him for the office of chancellor. And the members of council, being mostly men of extensive connexions and influence in the colony, and not bred to the legal profession, are also, in general, very little qualified to sit in this court, and I conceive, it would be much more advantageous to the suitors, and greater satisfaction would be given, if the governor were to sit alone.

“ There have been frequent occasions, where the members have been summoned to form a Court, who either from sickness or other cause, have not been able to attend, and the party, applying for the court, has, thus, been put to a fruitless expence of from £15. to £20. currency. This I have known to have happened more than twice, in succession, so that a party *having a motion to make* may be put to a fruitless expence of from £50. to £60. or £100. before he can be heard, because the members are not able to attend; whereas the governor sitting alone would have the power of holding a court whenever there might be business to be done.

“ But THE GREAT DESIDERATUM—that which would bring gladness and joy, which alone could afford security and confidence to the colonists—would be the appointment of a lawyer, of tried knowledge and ability, to fill the important situation of Chancellor. *I consider this measure as likely to enhance the value of property, at least 15 per cent.*”

ANTIGUA.

The Antigua court of Chancery is constituted in the same manner as the court of Chancery at Barbadoes and Dominica. It is held whenever applied for, as business occurs. The two Masters in this court, by a recent regulation, give bonds with two sureties in the sum of £10,000. for the due performance of the duties of their office. Receivers are chosen by the Masters, who ought to pass their accounts annually, before a Master, which however is not punctually performed. Members of council, judges of the court of Chancery, are sometimes appointed receivers to estates, and most inconsistently are nevertheless in the habit of voting on the causes. The chief justice deposed that the court, not being composed of professional gentlemen, was not uniformly regulated by legal principles in its decisions. The principal complaints in this island had reference to the irregularity and expense attending proceedings in the Court of Chancery, though several other grievances of no trivial nature, were forcibly urged upon the attention of the Commissioners.

Mr. Lee, a barrister of high reputation as a man of honour and integrity, gave evidence in cases before the Commissioners "to shew that proceedings in the Court of Chancery were governed by favour, influence, connexion and party feeling." Mr. Lee brought a particular case forward "*expressly to expose the iniquity of the Court of Chancery,*" composed of the council and the governor, (the governor coming last, and being a mere cypher.) Every decision "was anticipated. It was known which way the interest of each member lay, and his vote could be with certainty calculated accordingly."

In another case two professional gentlemen, Mr. Lee and Mr. Scotland, attended before the Commissioners, and represented "the present administration of the law in this

“ island, as objectionable in very many respects; as ignorant, “ prejudiced, partial, and conducted with such undue regard “ to particular interests, as to be almost corrupt. Interest “ and connexion in a small society, without the controul of “ public opinion, a free press, judges unconnected with the “ island and its inhabitants, and an enlightened bar that “ could venture to act independently, bore down every thing “ before them. *The Court of Chancery, where the greatest “ interests were at stake, was most exceptionable.*” Three respectable merchants of St. John’s attended the Commissioners, and one of them stated in the name and on the behalf of the merchants of the colony that “ the general “ wish for a reform of the judicature of the colony, and “ particularly in the Court of Chancery, and the satisfaction “ afforded by a prospect of having a sole Chancellor, a “ lawyer unconnected with the island, to sit in that court. “ For himself, individually, he (the speaker,) had, he said, “ several suits to bring, which he was deterred from instituting, by the circumstance of the defendants, in each “ case, having several powerful friends upon the bench, who “ could not help shewing favour to their connexions. He “ therefore implored the Commissioners to recommend such “ beneficial changes.”

MONTSERRAT.

A Court of Chancery appears to have been constituted by No. 185, of the laws of Montserrat, and amended by No. 222. By the former act, the governor or president, (Montserrat being a dependency of Antigua, and under the government of the captain general, though usually administered by the president of the council,) and FIVE members of the council composed a court. By No. 222, in case of the governor or president being a party to a suit, the next senior

member of council is appointed to preside; and for want of five disinterested persons to act as judges, three or four members of council are allowed (with the commander-in-chief) to form a court. The president informed the Commissioners that the *Montserrat Court of Chancery* in this island, *had been several times presented as a NUISANCE*; but that with the exception of one sitting that summer, he thought there had been no business in it for seven or eight years. He added that it ought not to be held in the island, for it was impossible, out of so small a society, to get judges in any case unconnected with the parties. The chief justice said, "there was formerly (about fourteen or fifteen years ago) great dissatisfaction with the Court of Chancery in this island, and, he believed, not without reason. He feared there were some unrighteous decisions; certainly there was no uniformity in their judgments; and there was thought to be influence and favour; and whether this were true or not, it was not desirable to have it suspected."

NEVIS.

The Court of Chancery in this island, derives its authority entirely from the King's authority and instructions to the captain general, there being no local law whatsoever, upon the subject. The captain general is sole Chancellor, and holds a court *pro re nata*, whenever he may be within his government; but there has been very little chancery business in this island for the last fifty years. The Master in Chancery does not give security: his per centage on money paid and received is two and a half per cent. The improvements suggested in this court, were that "the office of Chancellor should be distinct from that of captain general, and exercised by a sound lawyer; the expences of a suit diminished, and the delay in proceedings, and in appeals especially, obviated, if practicable."

ST. CHRISTOPHER.

On the arrival of the Commissioners in this island, a deputation of merchants communicated with them on the mal-administration of Justice. "Costs here," said the first gentleman, "are enormous. In *Chancery* you cannot recover any thing under an expence of £1,000. No man thinks of venturing *there*, except for large interests. The country is overrun with lawyers; owing to which, and the distress of the times, all the estates of the island are now in the Court of Chancery." A second gentleman added to this afflicting statement:—"It is the fees of officers of the court which are most exorbitant. There is no table of fees by which *they* choose to be governed, or by which the judge is guided in taxing their costs. There are two or three old acts regulating the fees; but these are obsolete, and the fees certainly too low. There is a later docket established by the governor and council, taken from a bill, which I believe, had passed the assembly but not the council, (it was interrupted by a dissolution, or something of that sort;) but *that*, though recent and suitable, they are not content with."

The master in this island does not give any security. On all receipts or payments by him he is allowed two and a half per cent.

The chief justice informed the Commissioners that during fifteen years he had known *ten* several judges of various pursuits and avocations, presiding in this court; presidency not always of selection, but in many cases *accidental*.

The attorney general suggested the appointment of experienced barristers to the office of Chancellor, one chancellor to preside in the courts of several islands, and visit them at stated periods for hearing causes and dispatch of business, with resident delegates to transact the interlocutory process of suits and ordinary business.

TORTOLA.

The Courts of Chancery for this island are usually held at St. Christopher. A court is *occasionally* held at TORTOLA, when his Excellency the Governor visits this part of his government. There is a manuscript volume of the rules of practice of this court, with some slight variations, with respect to *time*, &c. from the practice of the English Court of Chancery.

The Masters receive no salaries, but are paid by fees; they give no security.

The mal-administration of property by executors, the Commissioners' report as a well-founded complaint calling loudly for redress. It appears that neither sex nor *colour* are spared in this species of spoliation, for Mr. Dwarris in the report of a particular case states "I do not think that the *complexion* of the parties had any influence in this case: the fairest infants, left without a father's protection, would I firmly believe, have been equally despoiled."

Dr. Ross, an intelligent physician of the island, in a representation of the defects of the administration of West India law complained "of the expences and delay of the Court of Chancery, occasioned, or at least greatly aggravated, by the court being usually held at St. Christopher. A counsel was retained here at an expense of £50. sterling; it was necessary to retain another counsel at St. Kitt's, at £50. more; then the expense of sending over, the hire of the vessel, &c. &c. were grievous."

The master in Chancery in this colony, an opulent merchant, is also the chief justice, and attorney to a great number of the principal estates in the island. This "actor of all work," *Mr. Crabb*, was not bred to the law, and was "not made master and judge because he was fit for the situation, but because he was supposed to be more fitted than any other person in the limited society of his island." As it is,

he fills incompatible situations; his private interest and his public duties are placed in direct and constant opposition, and brought almost daily into actual conflict; and in the result, though he may be pure, he cannot be unsuspected." We suspect the reader cannot be surprised at his opulence.

To remedy these dreadful evils in the administration of justice in the West Indies, the Commissioners suggest—

1. The advantage of a legal education in all judges, appointed to preside in the superior courts, whether of law or equity.

2. A new set of Rules or revised court Act to regulate the practice of the courts, and produce a greater degree of uniformity.

3. New tables of fees, and the appointment of proper persons for the taxation of costs.

4. The division of the colonies into two circuits; Barbadoes, Tobago, Grenada, and St. Vincent to form one circuit; and Dominica, Antigua, Montserrat, Nevis, St. Christopher, and the Virgin Islands, the other circuit. On each of these circuits, two superior judges; one an equity judge, and the other a common law judge, and one attorney general, for the district; all appointed from England. A puisne resident judge and solicitor general or crown officer, in each island. The equity judge to preside in the courts of Equity, and act as ordinary and admiralty judge.

The British public, acutely sensible of the evils of their *home* system of equity, must deeply sympathise with the unhappy sufferers under the Colonial Chancery. The above facts cannot be too publicly known. It is the duty of the Press to place them broadly and frequently before the country and Parliament, as no legislative measures have yet been adopted to remove evils so palpable and so immediately capable of remedy.

In this narrative and digest, from the Commissioners' Reports, it is not intended to cast imputations on individuals: in the words of Mr. Maddock, "*the fault, in truth, is in the SYSTEM, which is abominable.*"

The *tornado*, which periodically interrupts the sittings of the West India Courts of Chancery, is the only temporary relief of the islanders from the visitation of Equity.

No. 9.—Page 445.

Courts of Equity in Wales. Extract from the Evidence of Mr. Serjeant Heywood, given June 20, 1820, before a Committee of the House of Commons, appointed to consider the administration of Justice in Wales.

In the beginning of the reign of Edward I. we may describe South Wales, and part of North Wales as divided into districts, which had been conquered by the Lords Marchers, and held by them, and the remaining part of North Wales as belonging to Prince Llewellyn. Upon the death of that Prince, Edward possessed himself of his dominions, and afterwards leaving the Lords Marchers in possession of their territories, by a statute passed in the twelfth year of his reign, (generally called *Statuta Walliæ*) reduced the country, which had belonged to Llewellyn into four shires or counties, viz;—Flint which was annexed to the county palatine of Chester; and Anglesea, Carnarvon, and Merioneth, which three last he placed under the jurisdiction of the Justice of Snowdon, who was to administer justice according to the original writs of the King and the laws and customs, mentioned in the Act. Sheriffs and other officers of Carmarthen and Cardigan, were also provided, but no Courts of Justice erected for them. By

the statute of the 27th Henry VIII., c. 26, divers lordships marchers were made into the shires of Brecknock, Radnor, Montgomery, and Denbigh, and justice was to be there administered "in such form and fashion as justice is used" and administered to the King's subjects within the shires "of North Wales;" or, as is said in another clause, "adding towns to the counties of Carmarthen, Pembroke, Cardigan and Glamorgan, according to the English laws, as was done in the three shires of North Wales." Then came the statute of the 34th and 35th Henry VIII., c. 26, which adapting the above division into 12 shires, and regulating them, established the English system of jurisprudence throughout all Wales; incorporating with it, however, in some cases, the modes of proceeding in the Court of North Wales. I can find no law case in which the legality of the Courts of Equity in any part of Wales was brought into dispute, before the restoration of Charles II.; but in the year ensuing that event, the question, whether the great Sessions at Brecknock had a court of Equity annexed to it arose; the decision does not appear in either of the reporters who notice the case (1 Sid. 52, and S. C. 1 Keb. 129;) the former of them states that North Wales had a court of Equity from time immemorial; but whether South Wales had such court, had been often disputed, owing to a doubt arising from the before mentioned clause, in the statute 27th, Henry VIII., c. 26, which gives "such jurisdiction to South Wales;" and two cases were cited as having adjudged, upon solemn debate, in favour of the jurisdiction, one of them so early as the 3rd year of Charles I.

In Winn's case, 1 Sid. 92, the court of great Sessions of North Wales, is said "to be the ancient court of the said Kingdom, which had been from time whereof &c." and is confirmed by statute 27th, Henry VIII.; "but, South Wales was subdued by the Lords Marchers, and so

“divided into Counties.” The question was brought fairly before the court, with respect to the court of Equity of the great Sessions for the County of Denbigh, in the 19th year of Charles II., in the case of *Pulratt v. Griffiths*, 2 Keb. 259, and the decision in that case seems to have settled the dispute. A prohibition was moved for, because Denbighshire was only a new County, but the Court refused to grant it and said, “The practice having been always to proceed so, the court would not now alter it; and the words of the statute that justice should be there administered as in North Wales, extends as well to the courts of Equity as of Law.” It seems that after this case there was no dispute as to the Welsh courts of Equity; those of the three Counties of North Wales, notwithstanding the restraining words in the 27th Henry VIII., being considered in the English Courts as having existed from time immemorial, and always enjoyed them, and those of the other eight Counties (excluding Flint) having similar privileges by virtue of the words of reference in that statute, that the courts of great Sessions have, in fact exercised an equitable jurisdiction ever since this last case, we may assume from the modern uniform practice, confirmed by the *Practica Walliæ*, printed in 1672, only five years afterwards, which mentions it to have been in use ever since Henry the Eighth’s time.

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